

BEFORE THE  
CALIFORNIA ENERGY COMMISSION

In the matter of, )  
 ) Docket No. 07-AFC-6  
Application for Certification )  
for the Carlsbad Energy Center )  
Project (CECP) )

BUSINESS MEETING

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, JUNE 30, 2011  
10:00 A.M.

Reported by:  
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COMMISSIONERS PRESENT

Robert B. Weisenmiller, Chair  
 James D. Boyd, Vice-Chair  
 Karen Douglas  
 Carla Peterman

STAFF

Rob Oglesby, Executive Director  
 Renee Webster-Hopkins, Chief Counsel's Office  
 Dick Ratliff, Staff Counsel  
 Paul Kramer, Public Hearing Officer  
 Mike Monasmith, Siting Project Manager  
 Terry O'Brien, Deputy Director, Citing Division  
 Lana McAllister, Assistant Secretariat

ALSO PRESENT

Melissa Foster, Stoel Rives LLP, on behalf of the Applicant  
 Steve Hoffmann, NRG West, Applicant  
 William Rostov, Earth Justice on behalf of Center for  
     Biological Diversity  
 Ronald R. Ball, City Attorney, City of Carlsbad  
 Allan J. Thompson, Special Counsel for City of Carlsbad,  
     South Carlsbad Coastal Redevelopment  
     Agency  
 Matt Hall, Mayor, City of Carlsbad  
 Kerry Siekmann, Terramar Association  
 April Summer, Attorney for Rob Simpson, Environmental  
     Consultant  
 Dennis Peters, California ISO  
 Robert Sarvey, Member of Public (via telephone)

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## P R O C E E D I N G S

1 JUNE 30, 2011

10:10 A.M.

2 CHAIR WEISENMILLER: Good morning. Let's start the  
3 business meeting with the Pledge of Allegiance.

4 (Pledge of Allegiance recited.)

5 Mr. Kramer, do you want to start us off?

6 MR. KRAMER: Good morning.

7 CHAIR WEISENMILLER: This is Item Number 1. That  
8 and the Chief Counsel's report are the only items today.

9 MR. KRAMER: Okay, if you will bear with me. There  
10 have been a lot of late-breaking filings in the last couple  
11 of days, including three documents this morning on behalf of  
12 Mr. Simpson.

13 Before you today is the Errata and the Presiding  
14 Member's Proposed Decision for the Carlsbad Energy Center  
15 Project. The hearing was continued from June 15th to today  
16 to allow the public additional time to review the Errata,  
17 which was made available the evening prior to the June 15  
18 hearing. Just for scorekeeping purposes, there are several  
19 outstanding motions that were made in the written filings  
20 this week. I will just summarize those, more to identify  
21 them, not so much by reason of discussion or a  
22 recommendation at this point.

23 The Center for Biological Diversity has requested  
24 that the Commission in essence remand or refer back this

1 matter to the Committee - presently consisting of Vice-Chair  
2 Boyd - for further review and revision of the PMPD regarding  
3 cumulative impacts of this project and the three recently  
4 identified PPA projects that SDG&E is proposing for approval  
5 at the Public Utilities Commission. And also for  
6 consideration of those projects and any effect they may have  
7 on the No Project Alternatives Analysis. So that's motion  
8 number one.

9           If that were granted I think it's fair to say that  
10 would moot the other motions. Number two is also from the  
11 Center for Biological Diversity and that's a request for  
12 additional time to review what they call the revised PMPD  
13 and that's basically the Errata. Their argument is that  
14 they believe that the Commission's rule that refers to a 15  
15 day period for review of revisions to a PMPD is not  
16 satisfied by holding today's hearing because by their count  
17 14 days elapsed. We can go into the details of that after  
18 they make their comments, if you would like.

19           The next motion is from the Applicant. And that's a  
20 request to exclude the city's comments that were - the  
21 portion of the city's comments on pages one to 14 of their  
22 comments that were filed on Monday, I believe. And we will  
23 let the Applicant's counsel speak to that first.

24           And then Mr. Simpson this morning filed a motion  
25 asking that the Commission rescind the certification. Since

1   there has actually been no certification, I would  
2   characterize it as more properly a motion to deny the  
3   application on basis of the Applicant having issued a  
4   notification to the community that is attached both to Mr.  
5   Simpson's motion and the Terramar comments that were  
6   received earlier this week. And that was a one-page notice  
7   dated June 24 to the members of the community telling them  
8   that the project was planning to begin construction today.

9           If I've missed any other motions that were buried in  
10   some of the comments, I request that the parties call those  
11   to our attention. But those are the four that I've counted  
12   that the Commission will need to rule upon at some point as  
13   a part of today's proceeding. And, I think, for now unless  
14   you have questions that tees up the issues for today.

15           CHAIR WEISENMILLER: Okay, so it seems like the  
16   first threshold question is the second motion by CBD on the  
17   14 versus 15 days. And I was going to ask you and the  
18   parties to comment on that and then ask for a comment by the  
19   Chief Counsel's Office. So let's deal with that threshold  
20   question first.

21           MR. KRAMER: Okay. Well, by my count the time began  
22   on June 14th when the Errata was served. And today is the  
23   15th day following that. You don't count the first day, the  
24   day of service. And so we believe at least substantively -  
25   and considering that most, if not all, of the information

1 that was contained in the Errata was not strictly speaking  
2 new - for instance, the land use conditions that were  
3 proposed regarding the removal of the Encina Power Plant,  
4 those were first proposed by the Applicant and circulated to  
5 the parties. I didn't write down the precise date but prior  
6 to the end of the public comment period, so a week or two  
7 ahead of June 14th. And most of the Errata responds to  
8 suggestions that were made in the comments of the various  
9 parties that again were circulated at the time they were  
10 made to the other parties or were made at the public hearing  
11 where all the parties were present or could have been  
12 present. So we do not think that there is any reason to be  
13 concerned about that particular issue and would recommend  
14 that motion be denied.

15 CHAIR WEISENMILLER: Can I ask the Center if they  
16 want to explain their math?

17 MR. ROSTOV: Good morning. William Rostov for the  
18 Center for Biological Diversity. Thank you for the  
19 opportunity.

20 Two things about the math. First, the statute is  
21 1753 and it was a motion for clarification. The decision  
22 never said if 1753 applies. We argue that 1753 should  
23 apply. And if it does, the math goes as follows: On the  
24 14th after business hours the Errata was released and since  
25 this was after business hours you need to count from the

1 15th. Since I filed the motion I have found out that the  
2 public actually was not made aware of the Errata until the  
3 morning of the 15th. And I think it's 10.03 that says you  
4 can't count the first day. So if you want to include public  
5 comment you can't count the 15th, so you start on the 16th.  
6 Or typically if you file something after the business day  
7 you would also say the first day is the 15th.

8           And let me just read part of 1753. It says, if a  
9 revised proposed decision is prepared it should be forwarded  
10 to the full Commission, distributed to the parties,  
11 agencies, and so forth, and for a minimum a 15 day comment  
12 period before consideration by the full Commission. So  
13 there has to be a full 15 day comment period before full  
14 consideration by the Commission. So even if you use the  
15 math that Mr. Kramer just articulated you're not providing  
16 the full 15 days. No matter what, even if you started  
17 counting from the 14th, this would have had to be tomorrow.  
18 That's the math.

19           And then our motion also goes on to argue that there  
20 were substantial revisions to the PMPD, it was a 37-page  
21 Errata, it wasn't simply one or two points that were  
22 changed. There were new decisions made in it.

23           CHAIR WEISENMILLER: Okay. I was just going to  
24 stick with the math question for a second.

25           MR. ROSTOV: Sure.



1 CHAIR WEISENMILLER: And so I was going to ask the  
2 Applicant or if there is anyone else who wants to comment on  
3 the math question.

4 MS. FOSTER: Applicant would like to address the  
5 issue as well. Melissa Foster on behalf of the Applicant,  
6 NRG Energy for the Carlsbad Energy Center Project; and John  
7 McKinsey is available by telephone today as well.

8 The math only comes into question if it's a revised  
9 PMPD and here we have the PMPD plus the Errata. Section  
10 1753 for the 15-day minimum comment period only applies  
11 after the close of the comment period on the PMPD if a  
12 revised PMPD has been issued. A revised PMPD was never  
13 issued, it was simply an Errata to the PMPD. So Applicant's  
14 position is that there is no requirement for 15 days.  
15 Essentially, the Commission just allotted the parties extra  
16 time to digest the PMPD plus the Errata prior to today's  
17 hearing.

18 CHAIR WEISENMILLER: Staff?

19 MR. RATLIFF: I don't have a direct response to the  
20 math requirement. But we have no reason to quarrel with the  
21 Committee's decision on that.

22 However, I think the real issue is the one that's  
23 being addressed by the Applicant under what is required by  
24 Section 1753 of the regulations. The language used in our  
25 regulation requires a new comment period whenever the

1 Commission issues a revised decision or a revised PMPD but  
2 it doesn't define that term nor does it specify what exactly  
3 is implied. Staff has always believed that a revised  
4 decision is one that meets the criteria of the CEQA  
5 Guidelines, Section 15088.5, which is the recirculation of  
6 an EIR provision where there are certain kinds of changes  
7 made in the environmental document which are of such  
8 magnitude that they require the recirculation of the  
9 document.

10           And those are specified in the guideline and we  
11 think those criteria - I could speak to this more about the  
12 criteria - but we don't believe any of those criteria are  
13 triggered by the revisions that were in the Errata that the  
14 Commission considered at the last business meeting. And  
15 those would be the identification, for instance, of a  
16 significant new environmental impact or of mitigation  
17 measures that had not been contemplated that significantly  
18 changed and had themselves further impacts on the  
19 environment.

20           The Errata was 39 pages in length, yes, but that did  
21 not trigger 15088.5 provisions. The 39 pages was in part  
22 because a great deal of the Errata is simply restatement of  
23 the existing document with interlineated changes. So in  
24 Staff's view that was not a revised PMPD and that is not  
25 subject to the regulation.

1 MR. BALL: Chairman Weisenmiller?

2 CHAIR WEISENMILLER: Go ahead.

3 MR. BALL: If I might address the Commission.

4 CHAIR WEISENMILLER: Sure.

5 MR. BALL: Thank you. I'm Ron Ball, City Attorney  
6 for the City of Carlsbad and General Counsel to the Housing  
7 and Redevelopment Commission of the City of Carlsbad.

8 In effect, we join in this motion. I guess we don't  
9 have a position on the math other than it's a little bit  
10 startling that the Commission with all of the hard work  
11 that's been done over the years would stumble over a one day  
12 if a reviewing court decided to reverse the Commission's  
13 decision because of that. So I would not recommend making  
14 such a decision unless you are on a firm basis. And it  
15 doesn't sound to me as if you are on a firm basis if the  
16 calculation is within one day.

17 But as a practical matter, we think there is good  
18 reason for this Commission to grant more time. And I can  
19 think of many things. There were 37 pages of Errata but the  
20 two that stand out are the unprecedented condition that this  
21 Commission would assume the role of the fire official, which  
22 we really need more time to investigate that, get the  
23 position of the California Chief's Association on this, it's  
24 an intrusion that's never before in my review and my  
25 research been imposed on a local government. And that's the

1 first thing. The second thing is the Land Conditions 2 and  
2 3 did make a substantial revision to the PMPD.

3 CHAIR WEISENMILLER: Okay. But, again, we're  
4 trying to do step by step. So first is the math and then I  
5 think we will deal with the second part of the motion later.  
6 Why don't you hold that.

7 MR. BALL: Okay, and that's fine. If you're going  
8 to bifurcate that then I would like to have a few minutes to  
9 address the second part.

10 CHAIR WEISENMILLER: Oh, sure.

11 MR. BALL: Thank you very much.

12 CHAIR WEISENMILLER: Chief Counsel, do you have  
13 commentary on the math issue?

14 MS. WEBSTER-HOPKINS: Thank you, Chairman. On the  
15 math issue, looking at Section 1753 of Title 20, the parties  
16 are correct that it speaks to whether or not the proposed  
17 decision has been revised. Without reaching that issue  
18 squarely, I think that for purposes of identifying whether  
19 or not 15 days has passed we can conservatively assume -  
20 just for purposes of this step - that if it does apply, have  
21 15 days passed? And when I count the calendar, even  
22 assuming that the Errata was not noticed to the public until  
23 the 15th, today is the 15th day. You start counting on the  
24 16th and, without going through my fingers and half my toes,  
25 you reach today. Today is the 15th day. There is nothing

1 in the regulations that speaks to whether or not it needs to  
2 occur within business hours or not. The order following the  
3 business meeting on June 15th was clear that the parties  
4 would have 15 days to comment on the PMPD and the Errata and  
5 that oral or written comments would be received today at  
6 this hearing. So a full 15 days has passed and I'm  
7 satisfied that 1753, if it applies, if we were to decide  
8 that this is a revised decision, that we have satisfied the  
9 math.

10 CHAIR WEISENMILLER: Okay, thank you.

11 COMMISSIONER BOYD: Mr. Chairman, I have been and  
12 continue to be guided by the advice of the Commission's  
13 counsel. And based upon that advice which we just heard I  
14 will make a motion to deny the petition in question.

15 CHAIR WEISENMILLER: To the extent that I've  
16 bifurcated the discussion, at least on the 15 days, can we  
17 have that?

18 COMMISSIONER BOYD: Thank you, Mr. Chairman, for  
19 making that point. On the issue of the 15 days I want to  
20 make a motion.

21 CHAIR WEISENMILLER: Thank you.

22 COMMISSIONER DOUGLAS: Seeing no other parties  
23 jumping up I think I've heard from the parties that wish to  
24 speak and the Counsel's Office, so I second Commissioner  
25 Boyd's motion.

1 CHAIR WEISENMILLER: All those in favor?

2 COMMISSIONER BOYD: Aye.

3 CHAIR WEISENMILLER: Aye.

4 COMMISSIONER DOUGLAS: Aye.

5 COMMISSIONER PETERMAN: Aye.

6 CHAIR WEISENMILLER: This motion passes  
7 unanimously.

8 Now, onto the second part. And to the extent that  
9 part of our purpose today is to have a discussion of the  
10 Errata, it certainly would be good to go through the  
11 specific issues that you want to raise in the Errata. And  
12 certainly that will give all the parties an opportunity to  
13 focus on the specific issues in the Errata. Do you want to  
14 cover the second part of your motion.

15 MR. ROSTOV: Actually, I'm not sure if I understood  
16 what happened. So if you would indulge me for a second,  
17 could you just explain what the vote was about?

18 CHAIR WEISENMILLER: The vote was on the basic  
19 question of have we complied with the 15 day rule. And, as  
20 I said, you were starting to get into the issues of what was  
21 raised in the Errata and I wanted to deal with the threshold  
22 question first.

23 MR. ROSTOV: Okay, so you have denied the motion?

24 CHAIR WEISENMILLER: On the 14 versus 15 day  
25 question.

1 MR. ROSTOV: Okay.

2 CHAIR WEISENMILLER: But to the extent you also  
3 raised issues, I think, on the substance of the Errata -

4 MR. ROSTOV: Maybe I'm asking for a motion for  
5 reconsideration. And if I am, cut me off. But when I read  
6 the statute it said you had to have a full 15 day written  
7 comment period before the Commission held a hearing. I  
8 mean, that's the plain language of the statute. So you just  
9 take a vote contrary to the plain language of the statute  
10 that the 15 days is satisfied?

11 CHAIR WEISENMILLER: We took a vote based upon the  
12 advice of our counsel on what the statute and regulations  
13 require. You want to comment?

14 MS. WEBSTER-HOPKINS: Chairman, I think just to  
15 reframe the issue, Center for Biological Diversity has, I  
16 think, asked for determination in the first instance as to  
17 whether or not this is a revised decision. And my  
18 suggestion for purposes of getting beyond this procedural  
19 issue is that without making that determination we can  
20 assume that if it is a revised decision we can use the 15  
21 day time frame for allowing parties to provide comments and  
22 that if we do that we have satisfied the 15 days because the  
23 regulation does require a minimum of 15 day comment period  
24 before it's considered by the full Commission. Today is 15  
25 days, even if you consider the clock starting on the 15th as

1     opposed to the 14th of June.

2             MR. ROSTOV:   But the day hasn't ended.

3             MS. WEBSTER-HOPKINS:   Yes.   And, as I stated  
4     earlier, the regulations don't speak to full business days  
5     or times of the business day in which the clock starts  
6     ticking.

7             MR. ROSTOV:   Well, it sounds like you've denied my  
8     motion.

9             MR. ROSTOV:   Okay.

10            Now, to the extent you wanted to talk, you wanted to  
11    have specific comments on the substance of the Errata?

12            MR. ROSTOV:   Yes.   I don't want to go out of order.  
13    So, I mean, if you want to go back to an order.

14            CHAIR WEISENMILLER:   Okay, Mr. Kramer, do you want  
15    to talk about the substance of the Errata and structure that  
16    for us?

17            MR. KRAMER:   Most of the comments were - they were  
18    not requesting any specific changes in the Errata, they were  
19    simply saying the Errata were wrong for various legal  
20    reasons.   One specific change that was requested by the  
21    Applicant, though, was to condition Worker Safety-6, to  
22    remove a timing requirement from the part of the condition  
23    that is above the verification paragraph and leave the  
24    course similar provision intact in the verification.   And I  
25    will leave it to the Applicant to speak more precisely to



1 that, as it is their request.

2           There were some changes that the city requested to  
3 the language of the Errata. On behalf of the Committee, I  
4 don't recommend that any of those be made. And I think that  
5 pretty much sets the stage for a discussion of all those  
6 changes. Again, it was more the comments were not for  
7 specific changes but just that basically we got it wrong in  
8 some way or another, and for the reasons that you've  
9 previously heard at the June 15th hearing. Now, we could go  
10 through them specifically if you would like or wait for each  
11 of the parties to make their presentation.

12           CHAIR WEISENMILLER: Why don't we have each of the  
13 parties address the Errata. Applicant?

14           MS. FOSTER: Applicant only had one requested change  
15 to the Errata. There was an inconsistency between the  
16 condition language of condition Worker Safety-6 and the  
17 verification language and it was within the timing for  
18 submission of information. The condition required a 30-day  
19 submission period and the verification required a 60-day  
20 submission period. And so the Applicant has respectfully  
21 requested that the timing be stricken from the condition  
22 language and 30 days be put into the verification in lieu of  
23 the 60 days.

24           CHAIR WEISENMILLER: Thank you. Staff?

25           MR. MONASMITH: Mike Monasmith, Project Manager.

1 Staff filed request on Cultural Resources-6, CUL-6,  
2 requesting that changes made in the Errata be reverted back  
3 to PMPD requirements in terms of Native American monitors.  
4 The presence of monitors in native soil, undisturbed soil,  
5 there was a Native American organization that had filed  
6 early in this proceeding, back in 2008, the San Luis Band.  
7 And they had asked that Native American monitors be present.  
8 And we understand the concerns of the Applicant. We had  
9 discussed these before the Applicant had asked for these  
10 changes throughout this proceeding but Staff felt strongly  
11 on the presence of the Native American monitors and our  
12 comments essentially asked that we revert back to the PMPD  
13 in terms of the presence of a Native American monitor in  
14 certain undisturbed soils.

15 CHAIR WEISENMILLER: Thank you. City of Carlsbad?

16 MR. BALL: Thank you, Chairman Weisenmiller and  
17 members of the Commission. Good morning. We do appreciate  
18 the time you have given us to make our comments on the  
19 Errata sheet and the items that occurred at the business  
20 meeting on June 15th. So thank you very much. My name is  
21 Ron Ball, I am the City Attorney and the General Counsel for  
22 the Housing and Redevelopment Commission in the City of  
23 Carlsbad.

24 With me this morning is the Mayor of the City of  
25 Carlsbad and President of the Housing and Redevelopment

1 Commission, Matt Hall. Also present is our team leader, Joe  
2 Garuba, the property manager; Housing and Redevelopment  
3 Commission and Neighborhood Services Director, Debbie  
4 Fountain; and our special outside counsel, Allan Thompson,  
5 who is very familiar to this Commission; and special  
6 consultant Bob Therkelsen, who was the former director of  
7 this honorable Commission. And actually we had been looking  
8 forward to Commissioner Eggert's participation today, as I'm  
9 sure this Commission was looking forward to his  
10 participation also. But at the end of the day, if the  
11 Commission needs to continue this item for his participation  
12 we will not object to that.

13           So there are two housekeeping matters that I really  
14 wanted to address before we get into the substance of our  
15 remarks. The first one is the idea of the commencement of  
16 construction today. NRG issued a letter dated June 24th but  
17 it arrived in the mailboxes on Tuesday, June 28th,  
18 announcing that construction would commence today, on June  
19 30th. And that, of course, is illegal. It's illegal  
20 because there have been no local permits issued, if that's  
21 what NRG is proceeding under, in which case they would not  
22 be entitled to begin construction. If this Commission does  
23 proceed to issue a license today then construction would be  
24 enjoined because of failure to comply with the conditions of  
25 the license. And those required notice to the community and

1 notice to the City of Carlsbad. There are at least five  
2 specific conditions that require these notifications. So in  
3 my opinion construction cannot begin today, either under  
4 local law or under a license issued by this Commission if it  
5 does so today. So we are prepared to seek an injunction to  
6 stop construction today unless NRG would represent on the  
7 record that construction will not commence today. And I  
8 think that would help satisfy our concerns and the concerns  
9 of our residents.

10           The second preliminary matter is the motion that  
11 Hearing Officer Kramer mentioned, which is the motion to  
12 strike the first 15 pages of our comments. The team worked  
13 long and hard to present its response to the items that  
14 occurred in the business meeting and the items that were  
15 contained in the 36 pages of Errata. We submitted 21 pages  
16 of comments. We wanted to make sure it would be helpful, it  
17 would help this Commission and guide it in reaching a  
18 decision that comports with the facts and the law that were  
19 presented at the Commission's business meeting. And so I  
20 think we would like a ruling on that motion because it will  
21 really direct our comments. Because if we are not going to  
22 comment on the first 14 or 15 pages then that will change  
23 how we prepare. So I think maybe we could pause for a  
24 minute and we could listen to the Applicant, if they would  
25 make a representation as to the reason for the motion why

1 our comments should be stricken.

2 CHAIR WEISENMILLER: Okay, let's do that. I'm  
3 looking at Mr. Kramer -

4 MR. BALL: Thank you.

5 CHAIR WEISENMILLER: - could you structure the  
6 discussion of the motion to strike?

7 MR. KRAMER: You've received copies of the comments  
8 from the city and, as I recall, the Applicant's argument was  
9 basically that these arguments are going back beyond the  
10 Errata and are focused on the PMPD itself. And it's their  
11 position that the time to comment on the PMPD itself was the  
12 last meeting that you held. But I would prefer that Ms.  
13 Foster summarize, given that it's their motion, that she  
14 make the pitch to you, so to speak. Commissioner Boyd and I  
15 have not spoken specifically about this motion so I don't  
16 have a recommendation for you at this point. Perhaps after  
17 we hear from everyone I can come up and we can discuss that.  
18 But I would prefer to let the parties address it.

19 CHAIR WEISENMILLER: Fine, let's do that.  
20 Applicant?

21 MS. FOSTER: Applicant specifically objected to the  
22 first 14 pages of the city's comment letter as they were  
23 arguments and responses to questions - as they note in their  
24 first page - posed during the hearing that was held on June  
25 15th. It was Applicant's position that during the hearing

1 commissioner's questions were posed, they were responded to  
2 by all the parties, and the extension of the timeline within  
3 which to provide comments was specifically related to the  
4 Errata. None of the other parties provided any additional  
5 responses to questions posed during the June 15th hearing  
6 and the specific notice that was issued by the Commission  
7 allowing the additional time to comment was directed solely  
8 towards the Errata. So Applicant's position is that the  
9 legal argument and response to questions posed during the  
10 June 15th hearing was outside the scope of what the  
11 Commission was allowing the additional timeframe for.

12 CHAIR WEISENMILLER: Staff, do you have any  
13 comments?

14 MR. RATLIFF: Staff does not support the motion to  
15 strike. But I think we do agree with the Applicant's point  
16 that the city's comments go beyond the Errata and back to  
17 the substantive issues that were determined in the PMPD  
18 itself. Of course, in our view, the Commission is free to  
19 accept or reject those proposed changes that the city would  
20 prefer to have and to us it is simply superfluous whether  
21 you strike the comments. Perhaps it's just better to  
22 determine whether or not they merit changes to the  
23 underlying decision.

24 CHAIR WEISENMILLER: Mr. Thompson, do you want to  
25 respond to the Applicant?

1           MR. THOMPSON: Thank you very much. Allan Thompson  
2 for the city and Redevelopment Agency. Just two quick  
3 items. Number one, when Commissioner Douglas raised the  
4 legal issues at the last hearing two weeks ago the Applicant  
5 and the Staff responded. We were not asked and did not  
6 respond. And so what we attempted to do was to make our  
7 views known on the legal substance of the issues that were  
8 contained in the Errata. And more specifically, stepping  
9 into the shoes of the local fire department and the  
10 sufficiency of the Redevelopment Agency, were two issues  
11 that arose for the first time in the Errata. And part of  
12 the reason that we submitted those 14 pages was to give our  
13 legal reasoning behind our objections and difficulties that  
14 we had with those sections.

15           Second and overall, they were responses to, as I  
16 said, concerns that we felt that the commissioners raised.  
17 And we are trying to be helpful for the record.

18           COMMISSIONER DOUGLAS: Commissioners, I just want  
19 to say that I don't know why we would strike comment. I  
20 think that if a member of the public wanted to write us a  
21 letter today about the whole of the project we wouldn't  
22 strike it from the administrative record. So I think I want  
23 to understand what the purpose of striking comment would be.

24           CHAIR WEISENMILLER: I tend to agree, although I  
25 would discourage the parties from repeating all the

1 arguments from the last hearing. So certainly to the extent  
2 that we don't need to repeat stuff but if there is  
3 additional comment we would certainly welcome those.

4 Is that -- I hope you intend to clarify your  
5 position here.

6 MR. BALL: Thank you, Chairman Weisenmiller. Yes,  
7 we don't want to repeat what's been said before. And we  
8 thought we were helpful in our comments. So I take that as  
9 a ruling of denying the motion to strike our brief, or not?

10 COMMISSIONER DOUGLAS: Well, it actually wasn't  
11 quite yet. But it was an expression of my own opinion about  
12 the worth or striking comment. So I will move to deny the  
13 Applicant's motion to strike the first - is it 14? - pages  
14 of the city's letter to us.

15 COMMISSIONER BOYD: I will second the motion.

16 CHAIR WEISENMILLER: All those in favor?

17 COMMISSIONER DOUGLAS: Aye.

18 COMMISSIONER PETERMAN: Aye.

19 CHAIR WEISENMILLER: Aye.

20 COMMISSIONER BOYD: Aye.

21 CHAIR WEISENMILLER: So the motion is denied.

22 MR. BALL: Thank you. And then if we could have a  
23 response from the Applicant as to the commencement of  
24 construction today.

25 CHAIR WEISENMILLER: Let's wait on that one until



1 we've covered the Errata. I'm just trying to deal with the  
2 issues in a sequential fashion.

3 MR. BALL: Okay. Then, Chairman Weisenmiller, I  
4 would like to introduce the Mayor and the President of the  
5 Housing and Redevelopment Commission, who has some short  
6 remarks.

7 CHAIR WEISENMILLER: That would be great. Mr.  
8 Mayor, if you could introduce yourself for the record, for  
9 our court reporter.

10 MR. HALL: Yes, my name is Matt Hall, I am the Mayor  
11 of the City of Carlsbad and the Chairman of the Carlsbad  
12 Housing and Redevelopment Commission.

13 I would like to begin by saying that often I sit in  
14 your shoes but today I'm glad I'm standing here and not  
15 there. And my attorney has given me several remarks to more  
16 or less read into the record but I think I'm going to forego  
17 those and truly just speak from the heart. Today my request  
18 is simple. It is that you deny this project. It's a  
19 project at the wrong place at the wrong point in time. I  
20 also want to be very respectful of who you are and what you  
21 have to do today, but I would also ask you to be respectful  
22 of Carlsbad and our General Plan and our ordinances and our  
23 codes which govern us.

24 Understanding that, I know at the end of the day  
25 that you can override those and I will be respectful of that

1 if that is what you choose to do. But Carlsbad is a very  
2 well planned city. It's kind of interesting, this plant was  
3 actually part of the reason why - the existing facility is  
4 probably one of the reasons we are a city today. And, you  
5 know, I've been blessed, I've been part of this community  
6 for many years. I can actually remember when this plant was  
7 built. And Mr. Hoffmann and NRG, today they are very good  
8 stewards of the business and the plant that they operate.  
9 But Carlsbad has followed a different path. In the early  
10 90s there was a hearing with the Coastal Commission on power  
11 generation at this site. At that moment in time that  
12 request was denied.

13           And I understand that you have your authority and  
14 that state agencies often perhaps conflict but yet you do  
15 have a working relationship. And I would hope that that  
16 decision that was made at that time would be given some sort  
17 of thought. Because at that time Carlsbad started to take a  
18 different path and we actually formed a second Redevelopment  
19 Agency as to what we wanted our coastline to look like. And  
20 over the years we have literally tried to create an open  
21 space area from our village all the way down to Leucadia,  
22 which incorporates a lot of this area where this power plant  
23 is located. So with that in mind, today this simply - the  
24 repowering of this plant at this location does not make any  
25 sense to us at all. And we realize that it isn't dependent

1 on this exact site, this can be located in other parts of  
2 the county. There isn't an overdemand for generation in  
3 this county. San Diego Gas and Electric has ample supply  
4 when they go out to bid.

5 The second point I want to make today is one of  
6 safety. And we question the safety and would ask you to  
7 rethink some of the statements that were made at the last  
8 hearing. And if you choose to do an override that's within  
9 your authority. But we need to be very clear on how the  
10 safety issue is dealt with.

11 So in closing, I want to thank you for this moment  
12 in time. I don't envy you in the decision that you have to  
13 make today. But for the City of Carlsbad you're really  
14 setting us down two different paths in the future. And one  
15 of the things that I've thought about - because this is  
16 truly in the center of our city - it's like having a ring on  
17 your finger and you look at that ring and the diamond is  
18 missing. So with that I thank you for your time and your  
19 consideration.

20 CHAIR WEISENMILLER: Certainly. Thank you for  
21 being here today.

22 MR. BALL: So Mr. Thompson and I have divided up the  
23 comments and we will be brief. The thing that was so  
24 amazing to me - since I'm not a specialist in Energy  
25 Commission law, but I did review some of your past decisions

1 - and I understand if they are precedential then this  
2 Commission is bound by the decisions of a previous  
3 Commission. And that's also the law when a decision is made  
4 by a commission and substantially the same facts and issues  
5 are presented in the next decision then administrative  
6 collateral estoppel requires this commission not to  
7 disregard the prior commission's decision.

8           And that's exactly what happened in the Morro Bay  
9 Case. I'm sure Commissioner Boyd will recall that case.  
10 Commissioner Boyd, you were presiding member of that case.  
11 And it went back at least three times for revised decisions.  
12 Morro Bay, of course, is a coastal power plant. And the  
13 issue was, among other things, the necessity of a Coastal  
14 Commission report. And your staff argued quite strenuously  
15 - the staff attorney - that such a report was required. But  
16 this Commission didn't decide that issue, instead it  
17 directed its subcommittee to come back with a path, a  
18 formula for dealing with coastal power plants in the future.  
19 And that resulted in the MOA that I mentioned last time on  
20 June 15th. I just didn't know the history of how it had  
21 gotten here, and now I do know. And so in the Morro Bay  
22 decision - and it's quoted on page - the relevant parts are  
23 quoted on page 10 of our brief, which says that the  
24 Commission then directed its Siting Committee to resolve the  
25 legal and procedural questions regarding the roles and

1 responsibilities of the Coastal Commission in power plant  
2 proceedings.

3           That resulted in the MOA. The MOA in relevant parts  
4 says the Commission recognizes the Coastal Commission's  
5 important role of siting power plants in the coastal zone  
6 and intends to assure that the Coastal Commission's views  
7 are appropriately considered in this and future siting  
8 cases. So this is a future siting case of a coastal power  
9 plant in the coastal zone. And I think you're bound by your  
10 previous actions in that proceeding. So I can't  
11 overemphasize that.

12           There are a few other things that are in response to  
13 the Errata sheet and we submitted them in our brief. But on  
14 page 32 of the Errata sheet, which is on page seven of our  
15 brief, is a discussion of extraordinary benefits. And, as  
16 the Mayor has explained, that finding is a legislative one,  
17 it's required by the Housing and Redevelopment Commission.  
18 And when presented with this proposed power plant, including  
19 the conditions of Land-2 and -3, it determined that there  
20 were not extraordinary benefits on a local level. So I  
21 think, as the Mayor said, you can override that decision,  
22 but please don't ignore it.

23           I think it's been mischaracterized, the local LORS  
24 on the Aqua Hedionda Land Use Plan. Do you recall the  
25 discussion? We said there was a 35 foot height limit and

1 your hearing officer said, Well, that could be changed by a  
2 specific plan. And basically the specific plan is permit-  
3 like in his opinion. And so you can just substitute your  
4 judgment. But, that's wrong, that's a mischaracterization.  
5 It's not the specific plan that would overrule the Agua  
6 Hedionda Land Use Plan, it is a document in itself that  
7 requires two things to be amended: A recommendation by the  
8 Housing and Redevelopment Commission and a finding by the  
9 California Coastal Commission. So here we are again. And  
10 neither of those bodies have made those decisions nor have  
11 they been asked by the Applicant. So it's indeed  
12 unfortunate those two things did not occur.

13           The city's moratorium, that's on page 32 of the  
14 Errata and we discussed it on page 11 of our brief. The  
15 moratorium was passed under the police powers of the city,  
16 both as a charter city, which is Article 11, Section 5, and  
17 as a general law city under Article 11, Section 7 and the  
18 statutes of California, 65858. And what's the reason for  
19 that power delegated to local governments? It's to prevent  
20 a contrary land use, it is to prevent the approval of  
21 something in the area affected by the moratorium - in this  
22 case it was the coastal zone, pending an approval, pending a  
23 study and approval by the legislative body. And that's  
24 exactly what was done in this case. There was a moratorium  
25 placed on power plants in the coastal zone while the city is

1 studying that issue. It intends to change the land use, it  
2 will change to something other than public utility and  
3 utility zone, and it's allowed the time, the legislature  
4 allows the time for the government to study that and then to  
5 make its changes and the status quo does not change in the  
6 interim. Now, you can overrule that because you have  
7 paramount jurisdiction. It just hasn't been done.

8           There are two other express conditions that Hearing  
9 Officer Kramer didn't mention. And we asked both, now, two  
10 times in writing and one time verbally for an express  
11 condition on the fees and taxes that would be required to be  
12 paid by this plant if it is licensed. And those fees and  
13 taxes come up, they arise as a result of the operation of  
14 City Council Policy 17, which is called the Public  
15 Facilities Fees. And it is intended to offset the impact of  
16 new construction in the City of Carlsbad. It's 3.5 percent  
17 times the value of the construction of the, in this case,  
18 the power plant. If that is not paid for any reason there  
19 is a tax in Chapter 5.09 of the Carlsbad Municipal Code,  
20 which sets forth a construction license tax on any new  
21 construction in the City of Carlsbad, 3.5 percent times that  
22 same value. That condition has not appeared, even though we  
23 have requested it now three times in a condition to  
24 certification.

25           Finally, what we have also requested are specific

1 conditions that other permits not within the paramount  
2 jurisdiction of this honorable Commission be made an express  
3 condition so that those agencies operating under federal law  
4 need to be complied with. So, the EPA needs to be complied  
5 with and we believe the storm water with the Regional Water  
6 Quality Control Board, whose authority stems from the Clean  
7 Water Act, those need to be a condition precedent to the  
8 construction and operation of this plant.

9 Now, Mr. Thompson is going to address the remaining  
10 issues and we appreciate your indulgence listening to this.  
11 I hope I'm not repeating anything. Thank you.

12 MR. THOMPSON: Thank you very much. I will try and  
13 be brief. My issue is the fire issue. As you are all well  
14 aware, the Carlsbad Fire Chief under Section 503.2.2 of the  
15 California Fire Code is requiring a 50 foot width perimeter  
16 road at the bottom of the pit and a 25 foot perimeter road  
17 at the top of the pit. That's based upon experience, local  
18 knowledge, knowledge of the fire department, the location  
19 between a railroad and I-5, et cetera, et cetera. When we  
20 got the Errata and looked at the phrasing that the Energy  
21 Commission was basically stepping into the shoes of the  
22 local fire chief we tried to respond in a timely manner in  
23 our comments. But, as you can imagine, the discussion of  
24 what that really means has been going on until basically  
25 this morning and will undoubtedly go on in the future.



1 There are those that believe and have cited some references  
2 that once you step into the shoes of the local fire  
3 authority you become the local fire authority for training,  
4 response, all of those functions that normally are carried  
5 on by the local fire chief and his department.

6 I don't believe that is contemplated by the  
7 California Fire Code and in my X number of years  
8 representing clients before this Commission I've never seen  
9 anything quite like this. And I think it's very disturbing.  
10 Basically, in the view, I think, of many in the city you are  
11 taking upon yourself to create a dangerous situation and  
12 then probably would like to toss it back to the city fire  
13 chief and his men to do response. I think it's unfair.  
14 Again, if there are overriding state interests that would  
15 necessitate an override we could have hearings on that and  
16 we could discuss that. But the way that the section on the  
17 fire code is now, I think, is unacceptable.

18 Speaking just very briefly of the override, we have  
19 not had any request for override. We don't think it can be  
20 satisfied but we do believe, rather than reinterpreting  
21 local laws, stepping into the shoes of the fire chief and  
22 the other acrobatics to get to a point where you want to  
23 get, the best course is to present it as if the Warren-  
24 Alquist Act, I think, presents it. You comply with the laws  
25 or you get an override. Thank you very much.

1 CHAIR WEISENMILLER: Thank you.

2 For the record I should correct, Anthony Eggert is  
3 not a commissioner at this time, he has not been sworn in.  
4 We would love to have him back but he is not a commissioner  
5 at this moment.

6 COMMISSIONER BOYD: Chairman, I think I would like  
7 to make one remark. I want to hear from all the parties on  
8 all the issues. But the reference to Morro Bay and  
9 presiding commissioner - and that was a lot of years ago and  
10 I'll confess to not even remembering other than I served on  
11 the case. However, that case had multiple committees, it  
12 went out over so many years. It started out with  
13 Commissioner Moore presiding, Chairman Keys his second.  
14 When I replaced Commissioner Moore on this body,  
15 Commissioner Keys took over as Presiding Member and I served  
16 as the Associate Member. And I think that's the way it  
17 closed down. So just so people don't try to make analogies  
18 between me and all coastal cases, I don't think I was  
19 Presiding Member at that time. Mr. Therkelsen probably has  
20 a memory that goes back that far but I don't.

21 CHAIR WEISENMILLER: Thank you. Center?

22 MR. ROSTOV: Thank you. William Rostov again for  
23 the Center for Biological Diversity.

24 I have serious concerns about the procedures that  
25 are being followed here, and then I will talk about the

1 Errata, too. But first I did want to step back and talk  
2 about the motion for clarification. I think I did not  
3 understand your two-step process. So I do want to address -  
4 I would like a decision on whether 1753 applied. And I will  
5 just make one or two points about why I think it applies  
6 since other parties did.

7           If you look at the order that extended the timeline,  
8 that specifically says, If a subsequent evidentiary hearing  
9 results in a revised proposed decision on an application  
10 additional notice may be required pursuant to 1753. And  
11 that's exactly what happened here. There was a subsequent  
12 evidentiary hearing where Land Use Decisions 2 and 3  
13 contributed to an extraordinary benefit finding. So I think  
14 just by virtue of that, a revised PMPD, you should find that  
15 1753 applies, irrespective of your ruling on the timing.  
16 Page five of my motion also goes through a bunch of other  
17 reasons - I mean, articulates all the conditions that were  
18 changed, such as new land use and worker safety conditions,  
19 the Commission's decision to reject the City of Carlsbad  
20 Fire Marshal's recommendation and assuming the role of the  
21 fire department. There is also new analysis of Once Through  
22 Cooling.

23           And then that motion also included - and Mr. Kramer  
24 didn't point it out, but I think he said for parties to  
25 point out things when they came up here, so I think it was

1 just an oversight - we also did a motion for  
2 reconsideration. So we did a judicial notice of a bunch of  
3 documents that we believed were relevant to this proceeding  
4 and the Commission issued an order that said that we could  
5 have provided those documents at the May evidentiary  
6 hearing. And those documents were not relevant to the May  
7 evidentiary hearing. The May evidentiary hearing was set  
8 for certain limited topics. Those topics didn't include the  
9 issues that we raised and so we believe we properly  
10 presented evidence within the 30-day comment period that  
11 would go to cumulative impacts, no-project alternatives.  
12 So we're asking for a motion for reconsideration because  
13 essentially you have us in a Catch-22. You opened up the  
14 record on some issues. If we would have raised issues that  
15 were not part of the record people would have said we were  
16 out of bounds. So we took the proper procedures and did a  
17 motion at the proper time within the 30-day comment period.  
18 So I think the reasoning for rejecting us puts us in Catch-  
19 22, which really makes no sense.

20 And then there is a third procedural issue raised in  
21 the Errata, so I'm moving to the Errata comments now. The  
22 Errata contains new evidence from the Staff. The Staff  
23 didn't provide any request for judicial notice or a request  
24 to reopen the record like we did. And, as a matter of fact,  
25 the Errata includes evidence on those topics that are

1 related to what our judicial notice was on. And those are  
2 topics related to ISO, to the shutdown of the South Bay  
3 Power Plant. So since Staff introduced new evidence we've  
4 also done in our comments a motion for new evidentiary  
5 hearing on the issues that Staff introduced new evidence.  
6 And that new evidence includes an ISO report, which we would  
7 like to be able to cross-examine ISO about, as well as  
8 evidence about other power plants that have been cited. And  
9 there are so many procedural missteps here and, for whatever  
10 reason, it gives a strong inference that something else is  
11 going on, like there is a foregone conclusion.

12           We were disturbed to see the NRG letter that they  
13 planned to start construction today because today is June  
14 30th and if they able to start construction today they will  
15 be able to avoid federal greenhouse gas rules. So there  
16 could be a strong inference from all the rush and what we  
17 see as procedural missteps - I know you've voted against  
18 many of our motions - but from our perspective procedural  
19 missteps that this is this rush to judgment to get to June  
20 30th so the Energy Commission is essentially helping NRG  
21 avoid federal regulation of greenhouse gas emissions from  
22 their plants. And this would be consistent with the Energy  
23 Commission's approach to the Center's arguments under CEQA.  
24 We've raised several arguments, and two are the cumulative  
25 impacts and no-project alternative that relate to greenhouse

1 gas emissions, that have been rejected by this Commission.

2           So I really encourage you, if this isn't a rush to  
3 judgment, to really take a step back and deal with all of  
4 these procedural issues, allow all the evidence, as  
5 Commissioner Douglas said. If you got a letter at the end  
6 of the day you would take that comment. What we're saying  
7 is, you're getting new evidence, times have changed, it's a  
8 year and a half since the first evidentiary hearings, you  
9 should hear all the evidence. One thing that you did do is  
10 you took limited judicial notice of three power plants, the  
11 San Diego Gas and Electric PPA agreements. And once you  
12 took judicial notice of those plants you are required under  
13 CEQA, because they are probable future projects, to do the  
14 CEQA analysis, which would include a cumulative impact  
15 analysis and no-project alternatives analysis.

16           If you make your decision today we will never know  
17 how those analyses will come up because it will look like  
18 the Commission doesn't want to consider the full range of  
19 projects that should be considered within the context of the  
20 proceeding. I mean, I could go into the cumulative impacts  
21 or the no-project alternatives analysis but I think we've  
22 really covered them well in our papers. So I urge you to  
23 take a step back, cure all your procedural missteps, first  
24 make a finding on 1753. And I believe we shouldn't be  
25 having a hearing today. But even if you do think we should

1 be having a hearing, at least make a finding clarifying  
2 whether 1753 applies.

3 And if you're not willing to delay the proceeding I  
4 think you need to reject the PMPD because the greenhouse gas  
5 analysis has never been sufficient for all the reasons we  
6 articulated in our comment on the Errata plus the reasons we  
7 articulated in our earlier comments, which I will not raise  
8 at this point.

9 CHAIR WEISENMILLER: Thank you.

10 I do want to make sure it's very clear on the  
11 record, this case does not represent a rush to judgment. As  
12 you know, the Warren-Alquist Act is a combination of Charlie  
13 Warren's emphasis on having a public process and certainly  
14 incorporating environmental values but also Al Alquist  
15 pushed for a one-stop siting agency. Under the statute we  
16 are shooting for a metric of a year. This obviously is  
17 taking many, many times longer than a year. So of all the  
18 things you can say about the process, rush to judgment is  
19 not a case in this situation.

20 MR. ROSTOV: If you indulge me for a minute, I would  
21 respectfully disagree. There was a multi-month hiatus, then  
22 all of the sudden - and seemingly to get to the June 30th  
23 date - we had an evidentiary hearing within the PMPD comment  
24 period, which you said was not within the literal  
25 interpretation of the CEC rules - no, sorry, that you said

1    may be a literal interpretation of the CEC rules but is not  
2    the way the CEC does business. So I think there has been a  
3    rush to judgment because the procedural rules have not been  
4    met in this case.

5           CHAIR WEISENMILLER: But, again, just looking at  
6    the math, four years versus one year. But, thank you.

7           MR. ROSTOV: Thank you.

8           CHAIR WEISENMILLER: Earth Justice? Excuse me, you  
9    do both. Sorry.

10          MR. ROSTOV: I am Earth Justice.

11          CHAIR WEISENMILLER: Right, I was looking at -

12          MR. ROSTOV: I represent the Center for Biological  
13    Diversity.

14          CHAIR WEISENMILLER: Okay.

15          MR. ROSTOV: But, thank you.

16          CHAIR WEISENMILLER: Thank you.

17               Terramar?

18          MS. SIEKMANN: Good morning, Commission, and thank  
19    you again for hearing us on this. My name is Kerry Siekmann  
20    and I'm representing the neighborhood of Terramar.

21               Terramar is depending on the CEC to follow LORS and  
22    that is why our neighborhood has been so perplexed and so  
23    frustrated. And especially when I got phone calls Tuesday  
24    morning about this letter from NRG, people asking me why  
25    they are starting construction on June 30th. And imagine



1   how frustrated and perplexed I was when I received that.  
2   But up to this point the Errata and the PMPD have been  
3   disregarded, they've disregarded the local land use LORS,  
4   fire code LORS, Coastal Act, CEQA, we've all talked about  
5   all of this. But the Commission may not license a project  
6   that conflicts with LORS without making overrides, as you  
7   know. And then the Commission must prove that the facility  
8   is required for public convenience and necessity and there  
9   are not more prudent and feasible means of achieving such  
10   public convenience and necessity. And that comes straight  
11   out of the Public Resources Code 25525.

12               So for Terramar the manipulation and disregard of  
13   the fire code is the most significant violation of LORS.  
14   For the CEC Errata to take the position of fire code  
15   official is truly incomprehensible and I believe a dangerous  
16   precedent. Our fire chief and fire marshal have clearly  
17   explained they need 48 feet in the bowl and 25 feet for the  
18   upper ring road and there is not a soul in this room who  
19   would actually call the CEC if there was a fire at the  
20   plant. The would call the fire department, the Carlsbad  
21   Fire Department, the real fire code official and enforcer of  
22   the code. And if you look at the PMPD, if you look at  
23   Appendix pages A-40 and 41, you have a table where you  
24   clearly call the Carlsbad Fire Department the enforcer of  
25   the code, part of the definition of fire code official. So

1   you yourselves have called them the fire code official, yet  
2   in the Errata you say something different and they are all  
3   part of the same document. If you choose not to follow the  
4   fire code LORS then you must create an override. But it  
5   would be an override that goes against the Public Resources  
6   Code 25520(b) since the CEC must determine the CECP will be  
7   - and I quote - "designed, sited and operated to insure safe  
8   and reliable operation." If you do override then need must  
9   be determined and without an SDG&E contract for the CECP,  
10   need is fairly impossible to prove. So the project must be  
11   denied.

12           The second most-concerning thing to our neighborhood  
13   is the disregard for the Coastal Act. The CECP is not  
14   coastally dependent, it's an air-cooled plant. This plant  
15   could be sited anywhere. It doesn't need the ocean to  
16   function at all, which is exactly what the Coastal Act says.  
17   But for the need of a reason, the PMPD and Errata uses Once  
18   Through Cooling as a coastal dependence argument. But with  
19   the Errata Land Use 2 and 3, the shutdown of Encina's Once  
20   Through Cooling argument all of a sudden becomes a probable  
21   future event which per CEQA it must be considered. So  
22   therefore the coastal dependence argument is eliminated  
23   completely in the Errata. Only overrides make siting this  
24   plant on the coast a possibility. But then we return to  
25   need and without need an override is not possible and the

1 plant must be denied.

2           Then we move on to grid reliability. It's been a  
3 significant argument presented by the CEC throughout the  
4 proceedings. Yet, the Applicant during the years of 2008,  
5 2009, 2010 until 2011 allowed us to think there were RMR  
6 contracts on Encina, but there weren't any. And I happened  
7 to be the one who found that out and testified on May 19th  
8 of 2011 that there were no RMRs and the Applicant had to  
9 agree and say, yes, there are no RMRs. So we found out  
10 there is only a short-term tolling agreement on Units 4 and  
11 5. So it's the Applicant's responsibility to make sure  
12 we're given correct and truthful information in order to  
13 make good decisions. This was serious misinformation and it  
14 went on for over three years. This led us down the path of  
15 thinking that Units 4 and 5 were more valuable than they  
16 really were.

17           So then Land Use 2 and 3 were introduced in the  
18 Errata, stating that the Applicant will work toward shutting  
19 down Units 4 and 5. They would make a plan, work with the  
20 CPUC for shutdown, work the Redevelopment. But in actuality  
21 there weren't any RMRs on Encina. There is a short-term  
22 tolling agreement on 4 and 5. We know that the State Water  
23 Board is working towards the end of Once Through Cooling.  
24 SDG&E haven't offered them contract. So, I don't know, it's  
25 clear to me that 4 and 5 are already on their way out. So

1 offering them up to us as Land Use 2 and 3 extraordinary  
2 benefit really doesn't offer us much extraordinary benefit.  
3 And also grid reliability for Encina, what was the grid  
4 reliability? I mean, yeah, they're on the grid, yeah,  
5 there's a tolling agreement. But everybody is working  
6 towards shutting them down. So the value of Land Use 2 and  
7 3 are fairly negligible.

8           Then we move to the area of Visual Resources. Well,  
9 with Land Use 2 and 3 all of a sudden you're taking Encina  
10 down. And when Visual Resources were done they included  
11 Encina as the tallest structure in Carlsbad. But all of a  
12 sudden because Land Use 2 and 3 make the shutdown and  
13 teardown of Encina Power Plant a probable future event, per  
14 CEQA you've got to do your whole Visual Resources section  
15 over again. I quote from the PMPD, Visual Resources, page  
16 14: "Overall visual dominance of the project would remain  
17 visually subordinate to the much larger and taller EPS  
18 structure." So therefore all of a sudden visual impacts of  
19 the CEC were based on their lower profile in contrast to  
20 Encina's larger profile. So once Encina is gone the CEC  
21 would be the largest structure in the city. So Land Use 2  
22 and 3, visual impacts from the CEC must be evaluated as a  
23 stand-alone project per CEQA, as the removal of Encina is a  
24 probable future event. This has not been performed, though  
25 requested. Therefore, the CEC has not properly evaluated

1 visual resources and violates CEQA.

2 Then - and I'm almost done.

3 CHAIR WEISENMILLER: Thank you.

4 MS. SIEKMANN: Also the Errata disregards local LORS  
5 without making overrides because, according to CEQA  
6 Guidelines, a project results in significant land use  
7 impacts if it would - if it would - conflict with any  
8 applicable land use plan, policy or regulation of an agency  
9 with jurisdiction or that would normally have jurisdiction  
10 over the project. This includes but is not limited to a  
11 general plan, community or specific plan, local coastal  
12 program, airport land use compatibility plan or zoning  
13 ordinance. And that's from CEQA Guidelines. So Terramar  
14 joins in and supports the Power of Vision and the City of  
15 Carlsbad on the violation of local LORS in land use.

16 So the Errata continues to disregard LORS, CEQA,  
17 Coastal Act, local LORS, fire code. If LORS are to be  
18 disregarded, then multiple overrides must be made, then need  
19 and public convenience must be proven. If it's not  
20 possible, and Terramar believes that it is not possible,  
21 then the project really must be denied. And I thank you so  
22 much for listening. I also want to tell you that Julie  
23 Baker from Power of Vision did everything she could to try  
24 to be here today but with her scheduling it was impossible.  
25 Thank you.

1 CHAIR WEISENMILLER: Okay, thank you.

2 Any other Intervenors with comments on the Errata?

3 MS. SUMMER: Good afternoon. April Summer for Rob  
4 Simpson.

5 I will address the Errata second. The first thing I  
6 wanted to address is our Motion for Preemptive Rescission of  
7 Certification, which seems a little odd but the  
8 circumstances are little odd. Applicant NRG has made a  
9 material false statement in these proceedings in a letter  
10 sent to Carlsbad residents and has thus made known its  
11 intentions to violate multiple conditions of certification  
12 and has jeopardized the integrity of the public  
13 participation process in these proceedings. Pursuant to  
14 Public Resources Code, Section 25534(a)(1), Intervenor Rob  
15 Simpson moves this Commission to preemptively revoke  
16 certification of the Carlsbad Energy Center Project. In the  
17 alternative, Intervenor Rob Simpson moves this Commission  
18 hearing be continued so that the material false statement  
19 can be corrected, the public correctly informed as to the  
20 status of this project and the Applicant directed to cease  
21 and desist any construction activity until all certification  
22 of compliance are verified.

23 The representative from Terramar and Carlsbad  
24 resident received the attached letter from NRG on June 28th.  
25 In a letter dated June 24th the Applicant declares it will

1 begin construction today. This letter has served as a de  
2 facto notice to the public that the project has been  
3 approved for construction to begin today. This is a  
4 material false statement that has likely negatively impacted  
5 public participation. NRG has led the public, most  
6 importantly the nearest residents, to believe that as of  
7 June 24th NRG had the right to begin construction on June  
8 30th. This certainly has the potential for a chilling  
9 effect on public participation. Why would the public bother  
10 to participate in a proceeding for a project that they have  
11 been led to believe has already been approved?

12 NRG cannot legally begin construction today and was  
13 fully aware of this when it sent the letter. The Compliance  
14 Manager has refused to provide me with the compliance metric  
15 or any specific information regarding what NRG has submitted  
16 thus far, making it impossible to do a complete analysis of  
17 their ability or inability to begin construction today. But  
18 there are a number of legal requirements, both within and in  
19 addition to the conditions of certification that NRG has not  
20 and cannot comply with today, making it impossible for it to  
21 legally begin construction. Pursuant to Public Resources  
22 Code 25534, the Commission may after one or more hearings  
23 amend the condition of, or revoke the certification for, any  
24 facility for any of the following reasons: any material  
25 false statement set forth in the application, presented in

1 proceedings of the Commission, or included in supplemental  
2 documentation provided by the Applicant.

3 NRG has not filed a Notice of Intent or developed a  
4 Storm Water Pollution Prevention Plan, as required by the  
5 Clean Water Act. This is one of a number of reasons why  
6 they legally cannot begin construction today. To be  
7 eligible for use of the NPDES General Permit for  
8 Construction Activities NRG must file a Notice of Intent and  
9 develop a Storm Water Pollution Prevention Plan. This is  
10 required prior to the start of any construction per  
11 Condition of Certification Soil and Water No. 1 and under  
12 the Clean Water Act. The document NRG submitted and was  
13 posted to the CEC website yesterday as their storm water  
14 plan is actually a document - quote - "developed to allow  
15 Cabrillo Power LLC to minimize the potential discharge of  
16 pollutants in storm water discharge for the Cabrillo Power  
17 LLC Encina Power Station facility." This document was not  
18 prepared for this project and is not in any way a valid  
19 SWPPP for this project. NRG's attempt to try and reuse an  
20 old SWPPP shows not only poor judgment but also shows bad  
21 faith.

22 The second reason NRG cannot begin construction  
23 today is they have not complied with any conditions of  
24 certification that require it to submit information to the  
25 Carlsbad Fire Department or the City of Carlsbad. This



1 includes Worker Safety-1, Worker Safety-6, Waste-2, Soil and  
2 Water-1 and Transportation-1. All of the conditions I just  
3 listed require NRG to submit information to the Carlsbad  
4 Fire Department or the city prior to the start of  
5 construction. These requirements are found within the  
6 conditions, not the verification procedures. And so CEC  
7 Staff cannot utilize their limited power to modify  
8 verification to exempt NRG from complying. NRG has not  
9 submitted this information by June 24th and cannot meet the  
10 submittal deadlines either 30 or 60 days prior to site  
11 mobilization by today. CEC Staff cannot preemptively modify  
12 verification requirements before a project is approved and  
13 so NRG could not rely on the claimed modification of these  
14 deadlines to zero days.

15 COMMISSIONER DOUGLAS: Ms. Summer, I'm sorry to  
16 interrupt. I think we have your document outlining these  
17 arguments, is that correct?

18 MS. SUMMER: Yes. But unfortunately, because I  
19 wasn't able to file this this morning I assumed you hadn't  
20 read it.

21 COMMISSIONER DOUGLAS: Well, you know, we are on  
22 the ball, especially when we know that we have people  
23 traveling long distances to come speak to us. And so I have  
24 read it. And I wanted to ask you - I don't think  
25 preemptively revoking a certification has any meaning. I

1 think that either a certification has been granted or it  
2 hasn't. If we were to grant the certification I would expect  
3 and, you know, look forward to your motion asking for us to  
4 revoke it. But to me that issue is not ripe but the issue  
5 is noted and it is of concern. So I will want to ask some  
6 questions of Applicant, Staff and the city on this point.  
7 But I want to say that in my opinion preemptively revoke  
8 doesn't mean anything. We haven't given these guys anything  
9 yet to revoke.

10 MS. SUMMER: I would agree it's not the most  
11 artfully crafted motion. But it was what I could come up  
12 with. You know, I think -

13 COMMISSIONER DOUGLAS: Ms. Summer, it was a very  
14 creatively worded motion -

15 MS. SUMMER: It's something that -

16 COMMISSIONER DOUGLAS: - and it made your point and  
17 you have made your point on the issue of the potential for  
18 actions before, you know, A, potentially a license is issued  
19 or B, certifications of compliance are met should the  
20 license be issued. So that is something that we will  
21 discuss with Applicant, Staff and at least the city either  
22 now or shortly thereafter in this proceeding.

23 MS. SUMMER: You know, another reason that I found  
24 this to be particularly distressing is the Compliance  
25 Manager did tell me there was a possibility they would be

1 prepared to issue a letter of compliance today. So I found  
2 it particularly important to point out to you the reasons  
3 why this is not legally possible. So in my creatively  
4 inartfully entitled motion, you know, asking you to address  
5 the false statements that they have put forth -

6 COMMISSIONER DOUGLAS: All right. And in another  
7 motion you have asked us not to approve the change that  
8 Applicant asked for, taking the 60 days out of the  
9 conditions of certification and relying on the 30 days in  
10 the verification, that's correct, right?

11 MS. SUMMER: Um -

12 COMMISSIONER DOUGLAS: Or is that not correct?

13 MS. SUMMER: No, this is -

14 COMMISSIONER DOUGLAS: Rob Simpson objects to any  
15 modification of verification provisions - oh, modification  
16 of verification provisions, I see. All right.

17 MS. SUMMER: This again was filed with my concern  
18 that the Compliance Manager said there was a possibility  
19 that a letter of compliance would be issued today and the  
20 only way that that could be possible is if there were  
21 modifications to verifications, you know, for the reasons  
22 that I just listed. And I could have gone on but you saved  
23 us all the displeasure of that.

24 So I would like to then address the Errata.

25 MR. RATLIFF: Excuse me, Ms. Summer. I hate to

1 interrupt you but at least to clarify one of the aspects of  
2 this discussion I think it's important to say that Staff is  
3 not issuing a letter to proceed today and does not believe  
4 that the compliance documents required for the initiation of  
5 construction have been filed. And so I don't know what the  
6 Compliance Project Manager may have told Ms. Summer but in  
7 fact Staff is not going to issue such a letter to proceed.  
8 So I just wanted to clarify that point in case there is any  
9 misunderstanding about it.

10 COMMISSIONER DOUGLAS: Thank you, Mr. Ratliff.  
11 That question was going to be asked imminently, as soon as  
12 Ms. Summer was done with her presentation. I guess while we  
13 are on the topic let me ask Applicant, does Applicant have  
14 any intention of initiating construction either, A, without  
15 a license or, B, without having complied with the  
16 requirements prior to getting a notice that you can proceed?

17 MS. FOSTER: No, Applicant does not intend to begin  
18 any construction in the absence of a license or a Notice to  
19 Proceed. The notice was sent and it stated that Applicant  
20 intended to begin construction today, knowing that it first  
21 required CEC approval and a Notice to Proceed.

22 COMMISSIONER DOUGLAS: Okay, hopefully that is  
23 clear to everyone. I know that the city asked the question  
24 but we have on the record that Applicant has no intention of  
25 commencing construction, A, without a license, B, without a

1 Notice to Proceed. We have on the record the Staff has just  
2 said that they don't intend to issue a Notice to Proceed  
3 today, is that correct? Maybe, Mr. Ratliff, could you or  
4 the Compliance Manager talk about what is outstanding on the  
5 compliance side?

6 MR. O'BRIEN: Commissioners, for the record, Terry  
7 O'Brien. I'm the Deputy Director of the Siting Division.  
8 We have not received all the compliance submittals from NRG  
9 and we are continuing to review those. On Monday I had a  
10 conversation with NRG and indicated that the Staff did not  
11 believe that it was going to be possible for them to begin  
12 construction. So we have never indicated that NRG was going  
13 to be able to go ahead today and begin construction  
14 activities.

15 I will say that the Staff has worked over many  
16 months of this year with other applicants and has spent a  
17 lot of time prior to certification on some of those projects  
18 reviewing submittals so that those applicants could proceed  
19 as expeditiously as possible. We haven't treated NRG any  
20 differently than we've treated other applicants that the  
21 Commission has licensed this year. But we have made it very  
22 clear that all conditions have to be met and, as I said,  
23 earlier this week I informed NRG that that was just not  
24 going to be possible.

25 And getting back to the issue of the communication

1   that took place with the Compliance Project Manager, we made  
2   it very clear in that communication that the Commission  
3   would have to approve the project and then the Staff would  
4   have to review the submittals and approve those submittals.  
5   And there simply isn't enough time to do that. When that  
6   might occur, should the Commission approve the project, I  
7   have no idea at this point in time. But we don't have all  
8   the information and some of the information that has been  
9   submitted I don't believe is adequate for us to complete our  
10  review.

11           COMMISSIONER DOUGLAS:   Thank you, Mr. O'Brien. I  
12  know that we are in Ms. Summer's time. Why don't you  
13  finish.

14           MS. SUMMER: I'm glad to hear that. And I will just  
15  say, I don't want you to feel that I've wasted your time but  
16  my concern was spurred by an email that there was a  
17  possibility that the letter would be issued today. So we  
18  should have had him talk a lot earlier.

19           We will try and be brief in our comments on the  
20  Errata. Again, I apologize for filing this so late and will  
21  try not to just read through the whole thing since you are  
22  all on top of it today. You know, the first thing that I  
23  would like to address is there definitely is a sense of  
24  there being a rush to judgment at the end of what I  
25  understand has been a very long procedure, that I have not

1 been a part of but I can imagine was quite grueling for  
2 everyone that is involved. Unfortunately, I think at this  
3 point the - you know, I don't know any other to phrase it,  
4 but the rush to judgment has resulted in a very poorly  
5 drafted PMPD and Errata. Not just poorly drafted in that  
6 there are major inconsistencies within the actual language  
7 of the PMPD but there are mutually exclusive positions that  
8 are taken that simply don't make sense. The major one being  
9 on whether or not the Encina Units 4 and 5 will be shut  
10 down. Depending on what issue is being addressed there are  
11 two competing positions that are presented in the PMPD.

12 For instance, the project description, page one,  
13 reads: "EPS Units 4 and 5, part of an EPS expansion that  
14 occurred in the late 1970s, would continue generating  
15 electricity regardless of the outcome of this proceeding."  
16 Even though the existing EPS steam boilers would be retired  
17 upon successful commercial operation of the new generating  
18 units, the remaining EPS Units 4 and 5 would continue  
19 operating. The uncontroverted evidence establishes that any  
20 future shutdown of Units 4 and 5 are imprecise potential  
21 events which currently defy meaningful analysis. And this  
22 is all language that is currently in the PMPD. At the same  
23 time the PMPD says Conditions Land-2 and Land-3 require the  
24 planning, permitting and financing of the eventual removal  
25 and redevelopment of the existing EPS Power Plant, Units 1

1 through 5 will be removed. This is, again, you know, poor  
2 drafting but it's also a result that just cannot be  
3 supported by the PMPD.

4           When this project began prior to the Errata this was  
5 a project that would use water from Encina Units 4 and 5.  
6 Now this is a project that will use water from Encina Units  
7 4 and 5 for a few years until these units are shut down.  
8 This is a defined point in the near future when this will be  
9 happening and this is included in the PMPD and it has  
10 changed the nature of this project, making the analysis of  
11 numerous critical factors completely inapplicable. As a  
12 great example, Terramar discussed visual impact. Even the  
13 project description is inaccurate. Power plant reliability,  
14 the biological resources, soil and water resources, the land  
15 use sections, these were all evaluated on what is a  
16 different project description than now exists after the  
17 Errata.

18           The most striking example of this is the effect that  
19 this has on the analysis of the application of the  
20 Endangered Species Act. The Staff assessment, which is the  
21 entire evidence that is used to determine if the Endangered  
22 Species Act has been complied with, concludes that the  
23 proposed CECP would not withdraw water from the lagoon for  
24 project-specific uses and would not result in impingement or  
25 entrainment impacts. However, if the Units 4 and 5 were to



1   cease operation and their service and auxiliary water pumps  
2   were no longer needed the CECP would require intake from the  
3   lagoon. This is exactly what is planned since the Errata  
4   has been introduced but there has been no effort to go back  
5   and do the proper analysis of what is now an entirely  
6   different plan.

7           The final point that I would like to make that  
8   you've heard in a lot of different ways but what really  
9   concerns me is the description of what is going to happen  
10   with Units 4 and 5. Again, it changes depending on, you  
11   know, what the need is. The need to what feels like find  
12   any way possible to approve this project. So on one hand  
13   they will be shut down so that you can prove extraordinary  
14   public purposes; on the other hand, they are not going to be  
15   shut down so that the Endangered Species Act doesn't apply.  
16   And there are some really serious issues that need to be  
17   addressed here and simply this is not a valid basis for  
18   approving their project. Thank you.

19           CHAIR WEISENMILLER: Thank you. Any other  
20   comments? Mr. Peters?

21           MR. PETERS: Chairman Weisenmiller and  
22   Commissioners, good morning. It's still morning, right? My  
23   name is Dennis Peters with California Independent System  
24   Operator, I'm the Manager of External Affairs.

25           And, as you know, the California ISO operates a

1 majority of California's electric transmission system,  
2 including the transmission system serving the greater San  
3 Diego area. And we insure generators, such as the current  
4 Encina facility, operate in balance with the needs of the  
5 electrical customers in California. And while we appreciate  
6 the land use controversy and issues in this case, the  
7 California ISO does support the Presiding Member's Proposed  
8 Decision. And I would like to make three points to explain  
9 our position.

10           First, consistent with the testimony presented in  
11 this proceeding by ISO witness Jim Macintosh on behalf of  
12 the CEC Staff, the electric generating characteristics of  
13 the proposed Carlsbad Energy Center will help the ISO  
14 balance the grid as the State of California works to meet  
15 its 33 percent renewable portfolio standard. The PMPD  
16 correctly acknowledges that intermittent resources like wind  
17 and solar create large system ramps and the special  
18 resources that can compensate for renewable intermittency  
19 will help the ISO maintain a balance between supply and  
20 load. To achieve its renewable goals California will need  
21 electric generating facilities such as the Carlsbad Energy  
22 Center.

23           Second, the proposed Carlsbad Energy Center  
24 represents a significant step to bring the existing Encina  
25 facility into compliance with California's policy regarding

1 the use of coastal waters for power plant cooling. So under  
2 the statewide policy adopted by the State Water Resources  
3 Control Board, Encina must come into compliance by the end  
4 of 2017. The cooling technology of the proposed Carlsbad  
5 Energy Center is consistent with the policy and will permit  
6 Encina Units 1 to 3 to cease using coastal waters for  
7 cooling purposes. I would just note, too, that in the  
8 existing OTC policy the policy could allow the plant to  
9 operate after 2017 if needed for reliability. So again,  
10 just to achieve its water use goals, my second point is that  
11 California will need facilities such as the Carlsbad Energy  
12 Center Project.

13 And finally, as the PMPD recognizes, the greater San  
14 Diego area requires a certain amount of local generation  
15 resources. The ISO assesses how much local generation is  
16 needed pursuant to federal reliability standards under which  
17 the ISO must plan system operations. And with regard to the  
18 Errata to the PMPD, we would agree that revision to Item No.  
19 12 on page four is consistent with the ISO's analysis  
20 completed in the 2013 to 2015 local capacity technical  
21 analysis. So the proposed Carlsbad Energy Center would help  
22 insure a more reliable electric system in the San Diego  
23 area. And based on current supply and load forecasts, ISO  
24 believes that the PMPD correctly concludes that without  
25 construction of the Carlsbad Energy Center Project

1 retirement of Encina Units 1 to 3 may be difficult to  
2 accomplish.

3 So for those reasons the ISO supports the PMPD. And  
4 I will take any questions. Thank you.

5 CHAIR WEISENMILLER: No questions. Thank you.

6 MR. PETERS: Thank you.

7 CHAIR WEISENMILLER: Is there any public comment?

8 MS. MCALLISTER: On the phone.

9 CHAIR WEISENMILLER: On the phone?

10 MS. MCALLISTER: Would you like to call some names?

11 CHAIR WEISENMILLER: These appear to be our staff  
12 consultants.

13 MS. MCALLISTER: There are some on the white papers.

14 CHAIR WEISENMILLER: Well, Mr. Greenberg, would you  
15 like to speak?

16 (No response.)

17 CHAIR WEISENMILLER: Yeah, I think Alvin Greenberg  
18 is a consultant to our Staff and I think Mr. Walker, I  
19 assume, is also a consultant to the Staff.

20 So is there any member of the public on the phone  
21 who wants to speak at this time?

22 MS. MCALLISTER: They don't want to speak.

23 CHAIR WEISENMILLER: Okay, that's what I thought.  
24 You have already spoken, right?

25 (Affirmative response from audience member.)

1           You've already spoken, thank you. Let's go onto the  
2 next item. Paul? I think we still have an outstanding  
3 motion.

4           MS. MCALLISTER: John McKinsey is on the line and he  
5 would like to speak.

6           CHAIR WEISENMILLER: Okay. The attorney. Go  
7 ahead. Mr. McKinsey?

8           MR. MCKINSEY: I'm here. I do not need to speak,  
9 however.

10          CHAIR WEISENMILLER: Okay, that's what I thought.

11          Anyway, so I think we are at Paul. I believe we  
12 have at least one pending motion. I think we've addressed  
13 the pending motions, except for the first one from CBD. I  
14 don't believe we have given the parties an opportunity to  
15 comment on that.

16          MR. KRAMER: Well, I don't think you formally ruled  
17 on Mr. Simpson's request for preemptive -

18          CHAIR WEISENMILLER: We've discussed that. Anyway,  
19 we will take the pending stuff under advisement.

20          MR. KRAMER: Okay.

21          CHAIR WEISENMILLER: I want to get a full record.

22          MR. KRAMER: And then there is the Center for  
23 Biological Diversity request for reconsideration of the  
24 denial of their request to enter new evidence.

25          CHAIR WEISENMILLER: Right. Again, we will take

1   that under advisement. I think the cumulative impacts is  
2   the one motion we have not really given parties an  
3   opportunity to address. Is that correct?

4           MR. KRAMER: That's correct.

5           CHAIR WEISENMILLER: Please.

6           MR. KRAMER: I would just like to offer you a couple  
7   of responses very brief to the points of this one.

8           CHAIR WEISENMILLER: Oh, that would be good.

9           MR. KRAMER: The mention in the LORS table of the  
10  fire code, the city is enforcing the fire code, it was  
11  certainly not meant necessarily to say that the city is also  
12  the interpreter and the setter of the standards that would  
13  apply to the project, which as we said two weeks ago,  
14  roughly, is the job of this Commission because this  
15  Commission is issuing the permit. And as far as the  
16  perceived inconsistency in the way the shutting down of  
17  Units 4 and 5 are treated in the decision, the distinction  
18  is not between whether the units operate or not in most  
19  cases, it's whether the units are physically on the site,  
20  either mothballed or just abandoned or they're removed. So  
21  it's one thing to say, or argue, that perhaps market forces,  
22  OTC rules, will mean that at some point the units will no  
23  longer generate electricity. But it's another thing to say  
24  that they will be torn down and the site at least made flat  
25  if not restored for some other purpose. Those are two very

1 different things and the removal does not necessarily flow  
2 immediately from the ceasing of the generation.

3           As far as the visual analysis and some of the other  
4 analyses, I know that one of the themes that underlies a lot  
5 of the public comments is that when we set our background  
6 for CEQA purposes, because we measure impacts against the  
7 background, and in almost all cases that's the way things  
8 are now. So it's inappropriate to assume that the Encina  
9 Plant has disappeared for purposes of the visual impacts  
10 analysis; for purposes of the water analysis, to assume that  
11 it's not drawing water from the ocean at this point; for  
12 purposes of the air quality analysis, that it is not  
13 emitting criteria pollutants into the atmosphere. That's  
14 just not the way background works for purposes of CEQA.  
15 And, while people want to characterize the decision as  
16 having disregarded the city's LORS, I would characterize it  
17 instead as a disagreement over the interpretation of those  
18 LORS. And, of course, that is the province of this  
19 Commission. It considers the opinion of the local agency  
20 that administers those laws but it is not bound to accept  
21 those opinions in all regards.

22           The use of desalinated water for this project was  
23 proposed before the final Staff assessment was written and  
24 before the original evidentiary hearings were held in 2010.  
25 So it is not a new feature of the project that should

1 surprise anyone. So with that, the remaining motion, which  
2 will moot some of the others, was the request that the  
3 Commission -

4 COMMISSIONER BOYD: Mr. Kramer, before you move on,  
5 and since you've elaborated on some points, I would like to  
6 ask you a question and make a point here since you broached  
7 the subject of LORS, for instance. Mr. Ball made an issue  
8 of the fact that we've allegedly paid no attention to the  
9 request to make condition of certification the public  
10 facilities fees. He said three times they have requested it  
11 and three times we have ignored it. If I'm not mistaken,  
12 this issue was discussed in our public hearing in May. And  
13 if I'm not mistaken, we indicated total understanding of the  
14 request but furthermore said that this is - my words, in  
15 effect - a LORS, local ordinance that one would expect the  
16 applicant to comply with, as they comply with all laws,  
17 orders, regulations, et cetera. So to be so concerned that  
18 we haven't made it a condition of certification is not one  
19 of ignoring the request but taking into account the fact  
20 that one would presume the Applicant would meet local  
21 regulations and therefore they would deal with the fees in  
22 question.

23 The other point you've already made about stepping  
24 in and taking over all powers and duties of the fire  
25 department, there has been a lot of extreme and excess in



1 testimony so far. This Commission, and my fellow  
2 Commissioners I'm sure, have lots of experience with lots of  
3 power plants all over the state, lots of issues involving  
4 public health and safety and fire protection, lots of  
5 negotiations and discussions with fire folks. And it has  
6 never been interpreted by anyone else that we're stepping  
7 into their shoes and taking over the entire responsibility  
8 of the fire department and that we would expect a phone call  
9 here if there is a fire in Carlsbad. So to me that's  
10 another excess that I've heard today.

11           And finally, Land Use 2 and 3, this has become known  
12 to me as the No Good Deed Goes Unpunished Provision, which  
13 has been turned into us making a justification for the  
14 facility instead of us trying to facilitate the fact that  
15 perhaps these units could come down if this plant were to be  
16 built, rather than just leave the question silent and allow  
17 the Applicant to, whenever the facts in the future lead us  
18 to the point that the units would be shut down if no longer  
19 needed, that the door could just be bolted, the gate could  
20 be bolted, the stack stays there and that's the end of it.  
21 So, you know, I'll wait until the conclusion of these  
22 proceedings but I'm half inclined to think about making a  
23 suggestion to my fellow Commissioners that we just strike  
24 those provisions as we proceed because it's caused more  
25 contention than it deserves. It's been used and misused, as

1 far as I'm concerned, to make arguments that aren't  
2 relevant. I just wanted to get that on the record, lest it  
3 be too many hours from now and we circle back to comments on  
4 other features. Thank you.

5 CHAIR WEISENMILLER: Okay. Just one follow-up. I  
6 mean, the other question that was raised was whether the  
7 Applicant was going to comply with EPA and storm water. And  
8 I guess it is probably time to ask the Applicant whether  
9 they would intend as a matter of policy to comply with the  
10 federal requirements.

11 MS. FOSTER: Of course, Commissioners.

12 CHAIR WEISENMILLER: Okay, I now understand Mr.  
13 Sarvey is on the line and would like to speak.

14 MR. SARVEY: Good morning.

15 CHAIR WEISENMILLER: Good morning.

16 MR. SARVEY: Thank you, Commissioners. I just  
17 wanted to make a couple of comments. I've been following  
18 this for quite some time now and a couple of issues -

19 CHAIR WEISENMILLER: Could you please identify  
20 yourself for the record and turn it up a little bit?

21 MR. SARVEY: Bob Sarvey.

22 COMMISSIONER DOUGLAS: And, Mr. Sarvey, if you are  
23 on speaker phone, if you could pick up the handset it would  
24 be helpful.

25 MR. SARVEY: I'm on a handset. But, yeah, I'll

1 proceed. One of the things Cal ISO just got up and made  
2 some statements about this project and there is also some  
3 information in the Errata that somehow this project is  
4 needed for reliability. And you base that on the 2012, 2015  
5 Local Capacity Analysis by Cal ISO. But that's been  
6 superseded by the 2012 Local Capacity Analysis. And the  
7 2012 Local Capacity Technical Analysis says overall the load  
8 forecast went down by 182 megawatts (static/noise on phone  
9 line) 2011. Total resource capacity needed for LCR  
10 decreased by 297 megawatts. And then it also says the  
11 addition of the Sunrise Power Link is the reason for the  
12 further decrease in LCR.

13 But more importantly, Cal ISO has just provided  
14 testimony to the PUC about this 2012 LCR and this is what  
15 they said: Individually Sunrise will increase San Diego Gas  
16 and Electric's import capability into its service area from  
17 2950 megawatts to 4000 megawatts, thus enabling SDG&E to  
18 meet its resource sufficiency and its reliability needs. So  
19 I think you need to update the information you have there in  
20 your Errata because it's dated and it's no longer accurate.

21 Another thing about this project that I haven seen  
22 is I haven't seen any greenhouse gas impact analysis from  
23 the use of the desalinated water. In other words, what kind  
24 of greenhouse gas impacts can we expect from the  
25 desalination plant? So that's another thing I think is

1     deficient in the analysis itself.

2             And I just want to say, you know, I visit the coast  
3     as often as I can. I think there's better places to put  
4     this project inland. I know everybody has worked real hard  
5     to get to this point but really the most important resource  
6     we have is our coastal property and it really needs to be  
7     preserved. So I really think you ought to deny the project  
8     and find an alternative site for it. Thank you.

9             CHAIR WEISENMILLER: Thank you for your  
10    participation.

11            Mr. Peters, do you want to respond very, very  
12    briefly from the Cal ISO perspective?

13            MR. PETERS: Yes, just briefly, I guess. I had  
14    mentioned in my comments that the Errata was consistent with  
15    the 2013 to 2015 Local Capacity Technical Analysis. One  
16    thing that isn't always apparent in these analyses, we have  
17    ten different local capacity areas, San Diego is one of  
18    those. But each of those local capacity areas also has  
19    within it subareas with certain contingencies that can only  
20    be met with resources in those particular areas. And where  
21    the project is being proposed is in one of those subareas.  
22    So you have to look a little bit closer than the entire San  
23    Diego local capacity technical area - local capacity area, I  
24    should say.

25            CHAIR WEISENMILLER: Okay, thank you.

1           Mr. Kramer, go back.

2           MR. KRAMER: Yes, I had one more thought by way of  
3 response. I forgot to mention, it was suggested that there  
4 had been no analysis of the environmental impacts of this  
5 project drawing ocean water to desalinate after Units 4 and  
6 5 had retired, in other words when it was on its own. First  
7 of all, that ignores that this thing will still be plumbed  
8 along with the much larger desalination plant that the city  
9 is, I believe, constructing at this moment. And in any  
10 event, in the soil and water resources section at pages 10  
11 through 11 - and this is of the PMPD itself, not the Errata  
12 - there is a discussion and a citation to evidence from an  
13 impingement mortality and entrainment characterization study  
14 that was conducted in 2004 and 2005 to the effect that there  
15 will not be any significant impacts on species from this  
16 project drawing what are much lower amounts of water to  
17 desalinate for its own uses. So the allegation that the  
18 decision is silent on that point is incorrect.

19           With that, the remaining motion was the Center for  
20 Biological Diversity's request in essence that this be  
21 referred back to the Commission for a new evidentiary  
22 hearing and revisions to the proposed decision regarding the  
23 cumulative impacts of this project and other projects that  
24 had popped up on the radar since the original staff analysis  
25 and also the effects, if any, of those on the no-project

1 alternative analysis.

2 COMMISSIONER DOUGLAS: Mr. Chair, if I may. I  
3 wanted to ask a few questions about the cumulative impacts  
4 analysis aspect of CBD's motion.

5 CHAIR WEISENMILLER: Sure.

6 COMMISSIONER DOUGLAS: I think that the Chairman  
7 has reminded me that we might want to ask CBD to present the  
8 motion before we go to questions.

9 CHAIR WEISENMILLER: Exactly. Well, why don't we  
10 take a five minute break so people can stretch their legs  
11 and then come back.

12 (Five minute recess at 12:04 p.m.)

13 Okay, we are back on the record.

14 I understand before we go to the motions that the  
15 Staff may have some comments on the comments on the Errata,  
16 is that correct? Hopefully, limited.

17 MR. RATLIFF: Yes, Commissioners, we do.

18 COMMISSIONER BOYD: I think you need to identify  
19 yourself for the people listening in. We've gotten some  
20 complaints that people don't know who is speaking. That  
21 applies to all of us, apparently.

22 MR. RATLIFF: Yes, Commissioner, we do have some  
23 selective responses we would like to make. A lot has been  
24 said. As the Commission and certainly the Committee knows,  
25 many of these issues have been the subject of a great deal

1 of discussion at hearing and I don't want to revisit all of  
2 those issues.

3 COMMISSIONER DOUGLAS: Mr. Ratliff, I'm sorry. Can  
4 I just ask a question? This is just on process. Is this  
5 more in the nature of kind of closing comments and summing  
6 up based on the discussion or is this a new - another issue  
7 that you hadn't raised before?

8 MR. RATLIFF: It's in response to all of the  
9 comments that we just heard with regard to the Errata from  
10 the other parties.

11 COMMISSIONER DOUGLAS: All right. Now, I'll just  
12 ask the chair if it makes sense to do this before we talk  
13 about CBD's motion or after we've discussed CBD's motion.

14 CHAIR WEISENMILLER: Actually, what we were  
15 thinking of doing was, again, trying to go through CBD's  
16 motion and then basically giving everyone an opportunity for  
17 that sort of comment closing. But, again, very, very  
18 briefly and, again, do not repeat what you've said earlier.  
19 But, again, just to give everyone a change to get some  
20 input. And if you're talking more about sort of the closing  
21 argument then let's, you know, hold it off until we do that  
22 generally.

23 MR. RATLIFF: This is not a closing argument.

24 CHAIR WEISENMILLER: Okay.

25 MR. RATLIFF: This is a response to specific

1 comments, some of which probably shouldn't be left hanging  
2 but some of which may be -

3 CHAIR WEISENMILLER: Okay.

4 MR. RATLIFF: And I will try to be brief.

5 CHAIR WEISENMILLER: Okay.

6 MR. RATLIFF: The first one has to do with fees.  
7 The city has raised the issue of requiring conditions of  
8 certification to get its fees. What we would say is that  
9 that is addressed by our regulation. Section 1715 tells  
10 local governments how to recover their fees. The city is  
11 late in doing this but can still do so if it's timely. And  
12 it should read that section to get its fees. And there are  
13 very specific provisions about what the city's duties are  
14 and what things are recoverable in terms of permit fees.

15 The second thing has to do with the Coastal  
16 Commission Report. In fact, the statement was made that we  
17 are bound by the precedent of prior decisions. We are not  
18 unless there is an officially designated precedent decision.  
19 And secondarily, although we urged the Coastal Commission to  
20 give us a report on this case, they told us they would not.  
21 And in the evidence which the city entered into the record  
22 there is a letter from counsel for the Coastal Commission  
23 stating clearly that they interpret their statute to require  
24 participation in Notice of Intent proceedings but that  
25 participation in AFC proceedings is entirely elective



1 because of the way the provisions are written in the Coastal  
2 Act.

3 In terms of the extraordinary public benefit, this  
4 has been described as a major problem in terms of the  
5 consistency of the PMPD. We don't believe that it is. We  
6 believe that the commissioners wanted to assure that there  
7 was not only an extraordinary regional benefit but also that  
8 there was some benefit to the local government. The local  
9 government, the city, had raised the issue of the fact that  
10 if the existing facilities do eventually all shut down there  
11 is no assurance that the project will be removed. I think  
12 the extraordinary public benefit conferred by Land Use  
13 Conditions 2 and 3 is that it provides a process and a  
14 mechanism whereby if and when those facilities are all shut  
15 down they will be removed and that is a benefit, which I  
16 think the city has acknowledged.

17 And then finally in terms of the fire road, which  
18 has been a continual discussion about whether it's LORS and  
19 what we are doing exactly in that case, I just want to say  
20 that the actual fire code requirement - certainly at the  
21 time we filed our testimony - was a fire road of 20 feet in  
22 width. The Energy Commission proposed a 28 foot width. In  
23 its March 2009 letter to the Commission on what it would  
24 recommend the fire department told us they wanted a 24 foot  
25 width, at least a 24 foot width. We had a 28 foot width.

1 The new provisions in the fire code, as I understand it, I  
2 think it's a 24 foot width. When the city filed its  
3 testimony for the first time it required a 50 foot width, or  
4 said it would require it were it making the decision, a 50  
5 foot width. Certainly if you are fireman a wider road is  
6 better than a narrower one. But when the city's fire  
7 marshal testified as to how he arrived at 50 feet he said he  
8 doubled the number and rounded up. It struck us as not a  
9 particularly certain way to determine what the width of the  
10 fire road should be. So we saw no compelling reason for a  
11 50 foot width given the fact that there are many other  
12 projects that we have licensed with narrower roads than this  
13 one, also in confined spaces.

14 With that I think I would just say, you know, a  
15 number of these things have been discussed at length in the  
16 agency's proceedings. And I don't want to try to address  
17 all these issues again but we believe the PMPD is  
18 sufficient.

19 CHAIR WEISENMILLER: Thank you.

20 Let's go onto the motions, the last motion.

21 MR. ROSTOV: Good afternoon. William Rostov again  
22 for the Center for Biological Diversity. Thank you for the  
23 opportunity to talk about this motion a little more.

24 This motion arose from the fact that when we  
25 reviewed the Errata Staff had put in new evidence in their

1 response that was adopted into the Errata. And some of the  
2 evidence was on similar topics that we had requested  
3 judicial notice. And it's obvious that, if you're going to  
4 take evidence from one, you should take it from all. And  
5 that's why we're asking for an evidentiary hearing. And I  
6 actually think the discussion of Mr. Peters where he's  
7 talking about the ISO document, which is one of the new  
8 documents that we based our motion on, is instructive.  
9 Because Mr. Peters refers to this 2013-2015 local capacity  
10 document. We haven't had a chance to review or cross-  
11 examine a witness from ISO, they sent their government  
12 relations person. And, as a matter of fact, Mr. Sarvey,  
13 when he was on the phone, I believe - and if I'm wrong - but  
14 I believe that he referred to the 2012 Local Capacity  
15 Technical Analysis final report, which is actually the  
16 report that we had in our request for judicial notice, which  
17 was Exhibit E. So obviously the issues relating to this  
18 idea of what need there is, what the cumulative impacts of  
19 having a bunch of new excess capacity are going to be are  
20 still ripe and the Commission has been taking evidence from  
21 one party and not the others.

22           So we request - and we think it is a good thing that  
23 the record be complete and the record be accurate up to the  
24 present time. So the way we thought to solve that would be  
25 to do a new evidentiary hearing where all the parties could

1 put in information about probable future projects and we  
2 could really analyze some of these issues about is this  
3 going to be built or is something else going to be built,  
4 how does the PPA work. And it's based on the fact that the  
5 PMPD is already de facto accepted evidence without an  
6 evidentiary hearing. That's my presentation, I wanted to  
7 keep it short.

8 CHAIR WEISENMILLER: Thank you. I guess the one  
9 thing for clarification is Mr. Peters, I think if we did  
10 voir dire, would be qualified as an expert witness on these  
11 issues. I want to just talk about your background for ten  
12 seconds.

13 MR. PETERS: Yes, I'm currently External Affairs  
14 Manager -

15 CHAIR WEISENMILLER: Actually, hold off. We're not  
16 taking new evidence.

17 MR. PETERS: Oh.

18 CHAIR WEISENMILLER: But I would say that he is  
19 actually qualified in this area. Okay.

20 MR. ROSTOV: I guess my point was, I don't think  
21 what he said was evidence.

22 CHAIR WEISENMILLER: It's not.

23 MR. ROSTOV: Yes, based on the evidentiary record.  
24 And what we've been trying to do through a variety of  
25 motions, through first a Request for Judicial Notice and now

1 through this motion, based on the new information that we  
2 discovered in the Errata is to say everybody should have the  
3 opportunity to talk about these issues in an evidentiary  
4 hearing.

5 CHAIR WEISENMILLER: Okay. Applicant?

6 MS. FOSTER: Applicant opposes CBD's motion. We  
7 think that the PMPD and the Errata comply with the Warren-  
8 Alquist Act and the CEQA requirements. They have done the  
9 greenhouse gas and the cumulative impacts and the  
10 alternatives analysis. And at some point the record must  
11 close and the parties must move forward. So Applicant  
12 respectfully opposes the motion.

13 CHAIR WEISENMILLER: Staff?

14 MR. RATLIFF: Commissioners, Mr. Rostov referred to  
15 new evidence from the Staff that was selectively adopted  
16 into the Errata. I'm not sure what new evidence he's  
17 referring to. Our Errata comments mostly involved  
18 additional supplementary findings of fact and in some cases  
19 an updating of the information in the PMPD to include, for  
20 instance, the latest load forecast numbers and how that  
21 affected the capacity situation in the reliability area in  
22 question. We thought that that was updating and maybe he  
23 considers that to be new information. But at the same time  
24 it seems like the other challenge that we're hearing from  
25 the Intervenors is that we aren't acknowledging the latest

1 information. And, of course, we're trying to.

2 But having said that, the thrust of Mr. Rostov's  
3 motion is - certainly in his written work - one that points  
4 out that the cumulative impact analysis was done far in  
5 advance of the PPA projects being announced and points out  
6 the fact that these projects have not been addressed in our  
7 cumulative impact error analysis. And that is correct. And  
8 I believe that the prudent thing to do would be to reopen  
9 the record for the purpose of discussing and hearing  
10 evidence on the cumulative impact of those additional  
11 projects with regard to any area which is actually relevant  
12 or which is affected by the PPA indicating that those  
13 projects have been selected and will be the subject of an  
14 application to the PUC or are the subject of an application  
15 to the PUC.

16 So to that extent Staff supports the motion to  
17 reopen the record to take further evidence on that point.

18 CHAIR WEISENMILLER: Back to the first part of your  
19 statement, you refer to some updates of the load forecast  
20 that were put into the Errata. Does that update make any  
21 substantive impact on the conclusions of the PMPD?

22 MR. RATLIFF: It does not.

23 CHAIR WEISENMILLER: And so if we were to go back  
24 to the original version instead of accepting your changes  
25 that would presumably, from the Staff's perspective, not

1 have any substantial impact on the conclusions?

2 MR. RATLIFF: Well, the conclusions - the new  
3 information, I believe, is the new load forecast for the San  
4 Diego region. In the, I believe, greenhouse gas analysis we  
5 had a listing of those projects which we considered to be  
6 foreseeable and which - I think an examination of their heat  
7 rates and of the - I don't know if I'm using this term  
8 correctly but what is sometimes, I think, called the net  
9 short between the capacity in the reliability area and what  
10 would be required to allow the shutdown of the existing  
11 facilities. Of course, those numbers changed after the FSA  
12 was published because you had a new load forecast. So Staff  
13 did revise those numbers to reflect the lower demand  
14 forecast.

15 Did that change the conclusions for greenhouse  
16 gases? No, of course, it does not. But it - and the  
17 actual impact in terms of the no-project alternative, I  
18 think, has been discussed by this agency but has not been  
19 addressed in that document, other than to the extent that we  
20 did in our alternatives analysis of the no-project  
21 alternative state that if this project is not approved other  
22 projects will have to be found to try to make up the  
23 difference that would allow the OTC projects to shut down.  
24 And, of course, that is true, it was true when we wrote it,  
25 it remains true. The PPA projects are perhaps a partial

1 answer to that but they are uncertain because of where they  
2 are in the process, in the approval process. And we don't  
3 think that they are a complete answer, either.

4 CHAIR WEISENMILLER: Any further questions or  
5 comments?

6 COMMISSIONER DOUGLAS: If I may, I have a few  
7 follow-up questions for Mr. Ratliff. I, too, paid close  
8 attention to this portion of the motion, on cumulative  
9 impacts. And I wanted to dig a little deeper in terms of  
10 your position on what additional evidence might be needed in  
11 the context of both the cumulative air quality issues and  
12 the cumulative greenhouse gas issues.

13 MR. RATLIFF: Typically Staff when it does its air  
14 quality analysis reviews those projects that are within the  
15 air basin and particularly within a certain range of the  
16 existing project to determine if there are cumulative  
17 impacts. In reality, most of the air quality discussion is  
18 a cumulative impact discussion outside of those for toxic  
19 effects because they deal with the rather slight but  
20 important effects on air quality that various projects  
21 impose. And of course, as I think you're aware, there is a  
22 very elaborate programmatic framework provided both by the  
23 state and federal governments and by the local air districts  
24 that address these cumulative impacts in what can be  
25 described as a programmatic way. Typically, they have air



1 quality plans and any new project has to meet those plans,  
2 they have thresholds which trigger the requirement for  
3 offsets.

4 All of these things, of course, come into play not  
5 only for this project but for any future product. So to  
6 that extent I think it's - I would say that this project - I  
7 mean, the fact that you have new projects on the horizon  
8 does not necessitate a new analysis. At the same time,  
9 because our analysis is dated and did not have any reference  
10 to those project or their location or the possible  
11 cumulative effect of those projects, it seems to Staff to be  
12 prudent to actually allow us to do the analysis including  
13 the consideration of those projects because for one thing  
14 it's always very difficult to describe to the courts  
15 programmatic programs of the nature of the air quality  
16 programs. And we think it makes more sense to reopen the  
17 issue, take testimony on it and make sure that it's fully  
18 addressed both in terms of criteria pollutants but also  
19 greenhouse gas emissions.

20 CHAIR WEISENMILLER: Are there any other parties  
21 who want to address this motion?

22 MR. THOMPSON: Allan Thompson again. We would  
23 support Staff. And I know everybody is concerned about  
24 timing. But let me give two examples why I don't think that  
25 timing should be an issue in the consideration of this. And

1 those two considerations lie in the proposed conditions of  
2 certification, WASTE-2 and TRANS-7. WASTE-2 requires that  
3 60 days prior to the commencement of site mobilization that  
4 the project owner provide form and permits to remove the  
5 tanks to the CPM. And in the condition of WASTE-2 there is  
6 a requirement to obtain a permit from the City of Carlsbad  
7 Fire Department. Going to TRANS-7, again 60 days prior to  
8 the start of site mobilization the project owner submit a  
9 plan to the City of Carlsbad and other jurisdictions on the  
10 parking and staging plans.

11 So neither of those have been submitted to the city.  
12 There are others but those are the two 60-day requirements  
13 that have not been submitted to the city. So I don't think  
14 the timing should be an issue for the Commission.

15 CHAIR WEISENMILLER: Okay, thank you. Any other  
16 comments on the motion?

17 (No response.)

18 Then at this state what I would like to do is give  
19 all the parties a chance to wrap up and hopefully we give  
20 the Applicant a chance to also respond to the Staff. But  
21 anyway, very - you know, hit the high points but let's sort  
22 of go around one last time on comments on the record. Thank  
23 you.

24 MS. FOSTER: Applicant would just like to thank the  
25 Staff and the commissioners for the project. And, on behalf

1 of Applicant, I think Steve Hoffmann would like to say a few  
2 words as we wrap up.

3 MR. HOFFMANN: Steve Hoffmann with NRG Energy.  
4 Actually, I have been sitting listening patiently and wanted  
5 to several times jump in but counsel kept kicking me. And  
6 this is my chance to really put my foot in my mouth by  
7 saying, you know, this has been a four-year process with a  
8 lot of information that's been exchanged. We take our  
9 obligations to the grid, to the community and to the  
10 environment very seriously and it's hard to not, you know,  
11 affirm that we think this is the right project for all three  
12 of those stakeholders. And we are very determined to build  
13 it, we are very determined to comply with all of your  
14 requirements.

15 We respect the law and we respect the responsibility  
16 that we have to all of these stakeholders, but including the  
17 California grid. We have a long view of what we have to do.  
18 We are developing solar projects, we're developing  
19 electrical vehicle infrastructure, we're doing all the  
20 things that California policy wants us to do. And they want  
21 us to discontinue the use of ocean water for cooling of  
22 these coastal power plants. And we've spent millions of  
23 dollars to go through this process to do exactly that. And  
24 we will continue down that path. We will operate the  
25 existing power plant until we replace it. So the highest

1 and best use of our time, your time and, I think, the monies  
2 that we have available would be to apply those monies to  
3 accomplish the goal of retiring the existing power plant  
4 with this power plant. And we ask for your approval.

5 CHAIR WEISENMILLER: Thank you. Staff?

6 MR. RATLIFF: I have nothing to add.

7 CHAIR WEISENMILLER: City of Carlsbad?

8 MR. BALL: Ron Ball again. Thank you, Chairman  
9 Weisenmiller. Is Commissioner Peterman going to listen to  
10 this portion?

11 COMMISSIONER DOUGLAS: She mentioned to me that she  
12 had to step out but that she wanted us to continue.

13 MR. BALL: Okay, so I guess she can read our  
14 remarks. We do appreciate the fact that NRG will not  
15 commence construction without required permits either from  
16 the local government or from this Commission if it indeed  
17 issues a license. We support Staff's recommendation that  
18 there be additional evidence of the cumulative impacts of  
19 the foreseeable projects, including the three PPAs, that was  
20 the subject of our motion for official notice. Having said  
21 that, we still a little bit question the wisdom of sending  
22 out a letter that upset the community before there was a  
23 legal basis for that.

24 I guess the comments of Dennis Peters from ISO, to  
25 the extent that the Commission relies on those we would move

1 to strike those portions that are inconsistent with the  
2 testimony that the ISO presented in the February hearings in  
3 2010. So there are inconsistencies and the evidence, the  
4 statements made under penalty of perjury should be the ones  
5 that control, not the comments made this afternoon.

6 CHAIR WEISENMILLER: Obviously, we're not taking  
7 evidence today and we're not striking comments, but we are  
8 certainly trying to get a complete record. So we're  
9 certainly encouraging comment but we're not going to, you  
10 know, rely on inconsistent comment.

11 MR. BALL: Thank you very much.

12 COMMISSIONER DOUGLAS: If you recall, we have  
13 actually denied a motion to strike another comment, yours.  
14 So I don't think that we are in the mode of denying or  
15 striking comments.

16 MR. BALL: Then as to the local fees and taxes, I'm  
17 glad the Commission considers that a LORS, although we're  
18 not sure what are LORS and what are not because of the  
19 problems that have been explained before as to choosing to  
20 substitute the Commission's wisdom for the local  
21 government's wisdom. Well, the local government has imposed  
22 the fees and taxes and so we're concerned that they could be  
23 interpreted away, as the Hearing Officer has told you.

24 I direct your Staff to read our brief as to the  
25 precedential decision in the Morro Bay. Because it says in

1 that decision in plain language that it is a precedential  
2 decision. So I think that's an unfortunate misstatement,  
3 unless I read the decision wrong. And we believe that the  
4 prudent course would be to allow analysis and new evidence  
5 on the impacts of those issues. So the extraordinary public  
6 benefit, we really don't need to say much more about that.  
7 If the Commission does strike its proposed conditions that  
8 resurrects the public benefit issue even more than it is  
9 today but is insufficient with those two and three today.

10 So I'm going to turn it over to my colleague. If  
11 I've missed anything I asked him to fill in the blanks. We  
12 appreciate so much the Commission's time and energy, so to  
13 speak, on this important issue. And we look forward to the  
14 continued evidentiary hearing. Thank you.

15 CHAIR WEISENMILLER: Thank you. I would put on the  
16 record that Commissioner Peterman is back.

17 MR. THOMPSON: Thank you. Let me be brief. And  
18 that is a brief summary of the fire issue. And we may be  
19 suffering from a history of bad communication between the  
20 Staff, ourselves and Applicant. I think that the original  
21 document that went out that had at least a 24 foot reference  
22 was probably a standard document. The city anticipated  
23 that, like all large projects, the Applicant would come in  
24 and it would be a series of discussions specific to the  
25 project. That did not happen. And because that didn't

1 happen the fire department had to take the action to come up  
2 with the width requirements on its own based upon its  
3 experience, the location of the plant and other factors. So  
4 there was no change of opinion that the fire department had  
5 to do that on its own. We are now caught in a position  
6 where we don't know what the authority of the local fire  
7 department is but we would respectfully suggest that the CEC  
8 not step into the shoes and put itself in a position of  
9 interpreting the California Fire Code or the local fire  
10 requirements.

11 CHAIR WEISENMILLER: Thank you. CBD?

12 MR. ROSTOV: Thank you. And I will be very brief.  
13 William Rostov for Center for Biological Diversity. I want  
14 to compliment the Commission on its statements about trying  
15 to get a complete record and I want to encourage you to  
16 grant our motion. And I would just like to point out that  
17 the motion really related to all issues related to the SGD&E  
18 application. That includes the alternative analysis as well  
19 as cumulative impacts. And I think if the Staff started  
20 going back and reviewing there might be other projects that  
21 they would include once they started doing their analysis as  
22 well. But thank you. Everything else I have submitted in  
23 my papers.

24 COMMISSIONER DOUGLAS: Mr. Rostov, can you help me  
25 understand alternatives analysis?

1 MR. ROSTOV: Sure.

2 COMMISSIONER DOUGLAS: Do you mean beyond the no-  
3 action alternative other aspects of the alternatives  
4 analysis?

5 MR. ROSTOV: I was focused on the no-project  
6 alternative.

7 COMMISSIONER DOUGLAS: Thank you.

8 CHAIR WEISENMILLER: Terramar?

9 MS. SIEKMANN: I appreciate the opportunity to speak  
10 again. I also appreciate the fact that you've listened so  
11 closely to our request. Because we have been so frustrated  
12 for four years and we all understand that the world of power  
13 has really changed a lot in the last four years and it's  
14 wonderful that you're going to get up-to-date information  
15 because it has really changed. And also I would just like  
16 to let you know we haven't had an opportunity to question  
17 anyone - the May 19th and 20th hearings there was someone  
18 there from Cal ISO but we didn't have an opportunity to  
19 question as of today because they are not considered  
20 witnesses. But back in February of 2010 when we had the  
21 hearings we had Mr. Macintosh there and he is the Director  
22 at Cal ISO and this is a quote that he says. He said, We  
23 determine the need, that's correct, and the utilities  
24 contract for the power. So I'm really glad that you're  
25 opening up and taking a look at that issue of grid



1 reliability.

2           Also the fire issue, I'm looking at the Errata and  
3 it says right here that we believe the role of fire code  
4 official falls to us as we must both set the development  
5 standards for the project and then enforce them. And that's  
6 where we all came up with enforcing because it says so right  
7 in the Errata. So it's very confusing, especially when you  
8 look in the PMPD and you see the table and it says the  
9 Carlsbad Fire Department enforces them. So that's a real  
10 matter of contention because we really feel that our fire  
11 department is the fire code official.

12           So thank you so much for listening.

13           CHAIR WEISENMILLER: Thank you. I would point out  
14 that we have not voted on anything yet. So you're sort of  
15 presuming some actions we haven't taken and may or may not  
16 take. Any other parties want to make a final statement?

17           (No response.)

18           Then at this point we're going to take a lunch  
19 break. We are going to go into executive session, closed  
20 session. We should be back here in an hour. Actually, to  
21 be safe, let's say we will be back in an hour and fifteen  
22 minutes, at two o'clock.

23           (Lunch recess at 12:45 p.m., to resume at 2:00 p.m.)

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25           A F T E R N O O N   S E S S I O N

1 2:22 P.M.

2 CHAIR WEISENMILLER: Good afternoon. We are back  
3 in session. Mr. Kramer?

4 MR. KRAMER: I gather you would like me to tee up  
5 each of the individual issues for a vote?

6 CHAIR WEISENMILLER: Yes, please.

7 MR. KRAMER: In no particular order, on June 29,  
8 2011 the Center for Biological Diversity filed a new motion  
9 for evidentiary hearing regarding greenhouse gas issues,  
10 cumulative impacts and alternatives analysis, including all  
11 issues related to SDG&E's application for approval of power  
12 purchase agreements with three power plant projects. The  
13 recommendation is that the Commission grant the motion with  
14 respect to evaluation of the impact of the three new  
15 projects on our cumulative impacts and alternatives  
16 analyses. In addition, you would remand the matter to the  
17 Carlsbad AFC Committee to take evidence and revise the PMPD  
18 on those issues; and in addition to that revise it and take  
19 evidence regarding issues associated with conditions LAND-2  
20 and LAND-3 and the environmental impacts of those two  
21 conditions, implementing them; and secondly on the grid  
22 reliability issues raised by the comments by the Cal ISO  
23 during this business meeting.

24 COMMISSIONER DOUGLAS: I will move to grant the  
25 Center for Biological Diversity's motion to - actually, no,

1 let me restate that. I will move to remand this decision to  
2 the Carlsbad Committee to consider evidence on the Center  
3 for Biological Diversity's motion regarding greenhouse gas  
4 issues, cumulative impacts and alternatives analysis,  
5 including the issues related to SDG&E's application for the  
6 approval of power purchase agreements with the three power  
7 plant projects; and issues associated with conditions LAND-2  
8 and LAND-3 and their environmental impacts; and the grid  
9 reliability issues raised by the comments from the Cal ISO  
10 during the June 30th business meeting.

11 COMMISSIONER BOYD: I will second the motion.

12 CHAIR WEISENMILLER: All in favor?

13 COMMISSIONER DOUGLAS: Aye.

14 COMMISSIONER PETERMAN: Aye.

15 COMMISSIONER BOYD: Aye.

16 CHAIR WEISENMILLER: Aye.

17 The motion passes unanimously.

18 MR. KRAMER: Next, the Center for Biological  
19 Diversity filed a petition for reconsideration of the  
20 Commission's denial of its June 8, 2011 motion to take  
21 official notice and reopen the evidentiary record. The  
22 petition is moot to the extent that the proposed additional  
23 evidence can be offered at the evidentiary hearing described  
24 in the motion you just approved. And as to matters that are  
25 not relevant to those issues we recommend that you deny the

1 petition.

2 COMMISSIONER BOYD: I will so move and not try to  
3 paraphrase what was just said.

4 COMMISSIONER PETERMAN: I will second.

5 CHAIR WEISENMILLER: All those in favor?

6 COMMISSIONER DOUGLAS: Aye.

7 COMMISSIONER PETERMAN: Aye.

8 COMMISSIONER BOYD: Aye.

9 CHAIR WEISENMILLER: Aye.

10 Passed unanimously.

11 MR. KRAMER: The final Center for Biological  
12 Diversity motion was a motion for clarification and  
13 additional time under Section 1753 of the Commission's  
14 regulations. That motion is moot as a newly revised PMPD  
15 will be issued after the conclusion of the new evidentiary  
16 hearings that you previously directed and that revised PMPD  
17 would be issued for at least a 15 day comment period.

18 COMMISSIONER PETERMAN: I will move this motion,  
19 number three.

20 COMMISSIONER DOUGLAS: Second.

21 CHAIR WEISENMILLER: All those in favor?

22 COMMISSIONER PETERMAN: Aye.

23 COMMISSIONER DOUGLAS: Aye.

24 COMMISSIONER BOYD: Aye.

25 CHAIR WEISENMILLER: Aye.

1           Also passed unanimously.

2           MR. KRAMER:   Fourth, on June 30, 2011 - today -  
3   Robert Simpson filed a motion for preemptive rescission of  
4   certification and objections to modification of the  
5   verification provisions by CEC Staff.   We recommend that  
6   both be denied as premature as no certification has been  
7   approved thus far nor are there any conditions in effect  
8   today whose verifications could be modified.

9           COMMISSIONER BOYD:   I will so move.

10          COMMISSIONER DOUGLAS:   Second.

11          CHAIR WEISENMILLER:   All those in favor?

12          COMMISSIONER PETERMAN:   Aye.

13          COMMISSIONER DOUGLAS:   Aye.

14          COMMISSIONER BOYD:   Aye.

15          CHAIR WEISENMILLER:   Aye.

16          Also passed unanimously.

17          MR. KRAMER:   Finally, on June 28, 2011 the  
18   Applicant, Carlsbad - I may have their name wrong, but  
19   Carlsbad Energy Center LLC filed a letter requesting that  
20   pages one through 14 of the City of Carlsbad's June 27, 2011  
21   comments be disregarded.   We recommend you deny that request  
22   as the Commission generally considers comments from all  
23   sources in its proceedings.

24          COMMISSIONER DOUGLAS:   So moved.

25          COMMISSIONER BOYD:   Second.

1 CHAIR WEISENMILLER: All those in favor?

2 COMMISSIONER PETERMAN: Aye.

3 COMMISSIONER DOUGLAS: Aye.

4 COMMISSIONER BOYD: Aye.

5 CHAIR WEISENMILLER: Aye.

6 Also passed unanimously.

7 MR. KRAMER: That was the last one.

8 CHAIR WEISENMILLER: That was the last one.

9 COMMISSIONER BOYD: Mr. Chairman, if I might make a  
10 few comments.

11 CHAIR WEISENMILLER: Please.

12 COMMISSIONER BOYD: First I want the audience to  
13 understand that the actions just taken were the unanimous  
14 conclusion of this Commission. Secondly, I want to address  
15 the continuing references over a long period of time to the  
16 rush to judgment. And even though you addressed it earlier  
17 and I have addressed it in hearings in Carlsbad, I'm going  
18 to address it yet again. Repetition, repetition,  
19 repetition, the only way things tend to sink in. People  
20 need to understand that - and it was described earlier that  
21 we were acting on this, then there was a hiatus and then we  
22 were acting on this case again in an apparent effort some  
23 people perceive to beat some kind of deadline. The only  
24 deadline we're trying to beat was the one year we had to  
25 process this, many years later.

1           There was a hiatus when this agency received - well,  
2   when the federal economic stimulus program was instituted  
3   and this agency was given the responsibility to process  
4   hundreds of millions of dollars of requests for aid with  
5   respect to certain kinds of renewable power plants, all  
6   other work was stopped. And add on top of that the fact  
7   that California is going through significant fiscal crisis.  
8   We had furlough days. We probably are operating with 30  
9   percent of our vacancies unfilled because they can't be  
10   filled. So I'm glad to hear somebody thought we were  
11   rushing because I just want to mention that this staff has  
12   broken its pick to try to keep things moving. And this  
13   project, like other gas plants, was picked up in due  
14   process. The rest of it is sheer coincidence and you can  
15   make of that what you want. But I just wanted to point out  
16   that just happens to be the way things have turned out.

17           I am more than happy to continue to consider the  
18   merits of this case in the future. Thank you.

19           CHAIR WEISENMILLER: Thank you, Commissioner.  
20   Let's also note for the record that along with our contracts  
21   and grants we also last year processed nine applications  
22   under the RFS Solar Projects, which permitted over 4000  
23   megawatts.

24           COMMISSIONER BOYD: And I forgot the AB 118  
25   Program.

1 CHAIR WEISENMILLER: AB 118.

2 COMMISSIONER BOYD: Hundreds of millions of dollars  
3 that have gone out in economic stimulus from that activity.

4 CHAIR WEISENMILLER: Yes. And we did process a  
5 number of gas plants. So it has been a busy year. And we  
6 were sorry that this was put aside for a while. And now we  
7 are looking forward to moving forward on the consideration  
8 of it with a complete record.

9 COMMISSIONER DOUGLAS: I join in the comments of my  
10 fellow commissioners. As all of us sort of manage issues  
11 and try to manage scarce resources during a very, very  
12 demanding time, this project was put on the shelf for a  
13 while and there was not much we could do about it. But it's  
14 not the sort of thing that we like to do. And it took us an  
15 extra long amount of time for this project to get to this  
16 point because we had to do that, for the Recovery Act work  
17 that descended on our agency last year and the year before -  
18 into the year before.

19 So I want to thank the Applicant for having had the  
20 forbearance to stick with us as it did take a long time and  
21 as we did probably have to inform you at some point that we  
22 weren't working on your project for a certain period of  
23 time. And I also want to thank the Intervenors and the  
24 members of the public who have either, you know, A, come  
25 here today or, B, come to what I understand to have been



1 very well attended hearings in the Carlsbad area. So it's  
2 been, of course, important for us to hear from you. We take  
3 very seriously what you have to say. We particularly take  
4 note that very many people have traveled quite a long  
5 distance to be here today. So I want to thank you for your  
6 participation and for your continued participation in this  
7 process.

8 CHAIR WEISENMILLER: Thanks. This meeting is  
9 adjourned.

10 (Meeting adjourned at 2:33 p.m.)

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